18-8173

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RUBEN HERRERA, — PETITIONER
(Your Name)

vs.

BRANDON PRICE, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Ruben Herrera, C000795-5
(Your Name)
Coalinga State Hospital
P. O. Box 5003
(Address)

Coalinga, California 93210
(City, State, Zip Code)

(559) 934-0687
(Phone Number)

QUESTION(S) PRESENTED

CLAIMS FOR RELIEF

A. CLAIM ONE: PETITIONER'S PRE-TRIAL DETENTION AGAINST HIS FIFTH AND AND FOURTEENTH AMENDMENT RIGHT AGAINS DOUBLE JEOPARDY.

1. Because of the Doctrine of Collateral Estoppel and the Constitution's Prohibition agains Double Jeopardy, the State is Precluded from Seeking Petitioner's commitment.
2. Petitioner Has a Right to be Free From Double Jeopardy during the Adjudication of His SVP petition.

B. CLAIM TWO: PETITIONER'S PRE-TRIAL DETENTION VIOLATES HIS RIGHT to DUE PROCESS.

1. The State's Breach of Petitioner's Plea Agreement Violated His Right to Due Process and the cause of His Unconstitutional Detention.
2. California's Arbitrary and Capricious Application of the SVPA Violates Petitioner's Right to Due Process

LIST OF PARTIES

[X] 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:

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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 _____ to the petition and is

[ ] reported at _____; 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[ ] is unpublished.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 _____ to the petition and is

[ ] reported at _____; 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[ ] is unpublished.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 _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] 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).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] 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

Petitioner claims that he has not been afforded the opportunity to raise his federal constitutional issues in the State proceedings, and he has not done so. He was promised that his convictions were not-forcible, not did he commit any forcible acts, ever; nor has he ever been convicted any forcible act.

Your honor, all I am seeking is justice! Can we please go back to the beginning, to the root. Like Saint Augustine once said, "The truth is like a lion; you don't have to defend it. Let it loose, it will defend itself." All I have on my side is the truth.

Your honor, this is all I am asking: Like justice, she has the blindfold, and the blindfold represents the impartiality of the law. And, then she has the scale to weigh things out. She has the sword, and she will enforce her power as she sees fit. And my case is a very unique case; it is that one percent. That something is very seriously wrong here.

So, going back to the beginning to my Preliminary Hearing from April 20, 2004. I was charged with a couple of forcible acts with prostitutes. On top of that, one of them happened to be underage. She was posing as an adult prostitute at a highly known prostitution area at 2:00 in the morning. So, can we go back to the beginning. I fought any forcible sex act with all my soul, all my heart, with all that I could to prove myself innocent of any forcible acts. At the time, I didn't have any money for competent council. My attorney at the time, Jonathan Richter, was from the Alternate Defense Office. I asked him before we did the Preliminary Hearing if he could send his investigator to see if the prostitutes would be willing to recant their statements of me doing anything sexually forcible to them, because I didn't. What he told me is that, after he does the Preliminary Hearing he will do it before trial. I told him, "Hey, I don't want this case going any further than it has to. I think there's a very good chance that the prostitutes could recant their statement of me doing any forcible sex acts, and then this case is over with". So, he said he would not. So, I did a Marsden Hearing on the attorney on April 20, 2004, before the Preliminary Hearing. I told the judge that this attorney was not willing to do his job effectively, and that he's being grossly incompetent. What I told the judge at the Marsden Hearing, is that, all I want is for him to do his job. He didn't even have to succeed, he just needed to make an attempt to have his investigator go see the prostitutes. See if he could locate them, and see if they could recant their statements of my doing anything sexually forcible to them, because I did not. That's all I wanted, and that's what I told the judge. And the judge tells me that this attorney is his friend, and he believes he knows what he is doing, and that he was dismissing the Marsden Hearing.

At that point in my state of mind, I'm saying to myself, "This is not right. I'm being railroaded, my rights are being violated, and they're telling me to come back at 1:30." They're going to be doing my Preliminary Hearing. I have a mental health breakdown at that time, if that's what you want to call it. Keep in mind, I'm at court. My Marsden hearing was done around 9: 00 to 10:00 O'clock AM on April 20, 2004. So, after the Marsden hearing, in a court holding cell, I talk to a Bailiff, and they sent me back to the jail to talk with a psychiatrist. I explain to the psychiatrist about what is going on with me at the time. What he said is that due to my state of mind at this time, that he's going to place me in a padded cell, and he does. At around 1:30 PM, my so-call attorney, Jonathan Richter from Alternate Defense Office comes to my padded cell, and he tells me that he's going to have them drag my butt out of this cell, and off to the courthouse so that they can do my preliminary hearing. And, he is going to tell the judge about the incident. They drag me out of this padded cell wearing something that looks like a blue dress with no shoes on. If your honor would look at page 20 of the preliminary hearing transcripts that begin on line 12. I'm telling the judge that I don't have any shoes on. I don't have any clothes on either. Also, on line 17: <u>The attorney is going over to the defendant who is sitting in the jury box.</u> The United States Supreme Court judges says that we are to be competent at each court proceeding, and that we're supposed to be able to take part in our defense. How can I have done that if I'm in the jury box, and my

attorney is all the way on the other side of the room? And, I don't start talking until page 20, on line 12 of the transcripts.

In the transcripts, they start with the first alleged victim on page 2, line 21. (Erika, the underage prostitute), and they were over with case on page 16 line 7. This entire time, I am sitting in the jury box with no communication with my attorney at all. How could I assist in my defense at all. I am completely absent. The District Attorney is closer to me than my so-called attorney.

In the transcripts, they start with the second alleged victim on page 17, line 13 (Evelyn). The judge on page 20, line 21, finally allows me to move over to sit with my so-called attorney. All the way from page 20, until page 31, line 19. I state, "Your Honor, I object! I told the officer that I pledge the Fifth, and I was under the influence, and it is my attorney is not going to say. And I object to having a preliminary hearing. They drag me in here. I don't have any shoes on". Then, again on page 52, line 24. I said, "Your Honor, I object to having a preliminary hearing."

Your Honor, I don't know if you want to call this preliminary hearing fruit from the poisons tree or an example of a gross injustice at this court proceedings on April 20, 2004. I also read somewhere that the United States Supreme Court said that "Substantial evidence is when a qualified doctor has examined the defendant and states his opinion. I'm sure there are records of this incident that works for the County Jail who placed me in the padded cell. There is also evidence in the preliminary transcripts of my being placed in the padded cell.

There was a felony charge of plea on September 16, 2004. On page 2, line 6 of transcripts where it indicates, "Melissa White on behalf of the People. For the record, I would like to lay out the offer of the People. Given evidentiary issues, the People have offered to the defendant to be able to plea to a P.C. 188(c) (1), and a P.C. 286 (b) (2) which are both non-forcible crimes, and dismissing the remaining charges..." On September 16, 2004, this was my understanding of the agreement, and it is what was explained to me. That all forcible charges were being dismissed, and I was pleading out to sleeping with the underage prostitute 14 or 15, not under 14 (under 14 is a 288 (a), and I have a P.C. 288 (c) (1) and P.C. 286 (b) (2). If you look at the complete preliminary hearing transcripts or any police document, you will not see any that has to do with P.C. 286 (b) (20 which is sodomy because the District Attorney, Melissa White, made it up completely. Melissa White and William Boyce, attorney for the defense lied to the court. And the judge asked them if they were to look at the preliminary hearing transcripts, or a police report would I find evidence to support these two charges of 286 (b) (2) and 288 (c) (1)? They both answered, "Yes." I don't know what the court want to call this, but I'm just trying to show the court what actually happened.

One month later on October 18, 2004, on the Abstract of Judgment. C. Lopez listed my crimes as 'Forcible Oral Copulation'. I don't know anything about this Abstract of judgment, but I guess the Department of justice, CDC, Department of Mental health is under the impression that I was convicted of Forcible lewd Act on a Child and 'Forcible Oral Copulation'. So, I receive a parole violation, and I go to prison for my parole violation. When my release date come up from my violation, CDC makes a referral to the Department of mental health under Welf. & Inst. Code, §6600. The department send two evaluators and they are under the impression that I was convicted of something forcible, or under the age of 14, P.C. 288 (a). The two evaluators split as to their decision if there is credible evidence to detain me under the 6600 statute. But, of course, they consign two more evaluators who agree. With that being said, they way the 6600 law is written, the person has to have forcible sexual conviction, or a 288 (a). I don't! The sodomy charge that I have was completely fabricated if you recall by Melissa White. Everybody is trying to sweep all this under the rug. All I'm trying to do is bring it all to the light. I don't have anything to hide because I am telling the real facts of the case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

After that on February 17, 2009, (five years later) C. Lopez submits a new Abstract of judgment which has removed the 'forcible' from the crime and 'child' was also removed and replaced with 'minor'. Also, the words "Forcible Oral Copulation" was removed and in its place was 'Sodomy with a person under 16'. Currently, what's going on right now is that the United States District Court, Eastern District of California, Case No. 1:17-cv-00972-MJS. The judge as basically told me that I have to go to an SVP trial. My family and I have run out of money, and we cannot afford an attorney right now, so I'm only left to defend myself with a so-called hospital wannabe attorney. What I'm trying to say is that this particular facts of this case are sufficient to show that the prosecution was brought in bad faith. And on its face to be vague or overly broad in violation of the First Amendment. The state must file everything as a whole, and their various sections cannot be separated. They cannot say I was convicted of anything forcible or that I admitted to anything forcible. That has not happened here. They also exist where for any reason the State statute being enforced is unconstitutional on its face. As, Mr. Justice Butler, writing for the Court, said in, ***Terrance v. Thompson,*** *263 U.S. 197, 214, 68 L.Ed. 255, 274, 44 S.Ct. 15;* "To be entitled to remove a civil rights case from a state court to the appropriate federal court under *28 U.S.C. §1443 (1),* a defendant in a state criminal prosecution must show both that the right upon which he relies is a "right under any law providing for...equal civil rights," and that he is "denied or cannot enforce" that right in the state courts. It is the right to equal service in restaurants and the right to be free of prosecution of asserting that right. Not the right to have a trespass conviction reversed that the present prosecutions threaten. It is this right which must be vindicated by complete insulation from the State's criminal process if it is to be wholly vindicated."

Your Honor, these people are not playing fair! This is a complete gross injustice case. I did something forcible, have me admit to it. Find me guilty of something forcible. I'm the only one in this hospital that, has not, admitted to anything forcible because I didn't. I'm the only one in this hospital that wasn't convicted of any forcible sex act. But yet, the State of California wants me to go to trial for a WIC §6600. How can I defend myself against something like that? I did not give up my right in the beginning on April 20, 2004, or ever to defend myself against any forcible sex act. If anybody did, it was the People on September 16, 2004. And now, they want me to go to this court for a WIC§6600 case. They want me to go to trial, and they're going to mislead the jury. They're going to say that I did a forcible sex act, and I'm going to say I didn't. I can't defend against something like that, Your Honor! The jury is going to think that I am there for a reason. And the reason is that I'm a sexually violent predator. I don't understand this logic. All I understand is the law should clearly bar the state from pursuing a petition to commit pursuant §6600, when the prosecution know that I do not have a qualifying sex offense conviction. Federal court must now, save in exceptional and extremely limited circumstances intervene by way of either injunction or declaration in an existing state criminal prosecution. Such circumstances exist only when there is a threat of irreparable injury "both great and immediate." A threat of this nature might be shown if the state criminal statute in question were patiently and flagrantly unconstitutional on its face, *ante,* at *53-54, 27 L.Ed.2d.* at *680, 681, cf.* ***Evers v. Dwyer,*** *358 Us 202, 3 L.Edd.2d. 222, 79 S.Ct. 178,* or if there has been bad faith and harassment-official lawlessness-in a statute's enforcement, ante, at *47-49, 27 L.Ed.2d.* at *667, 678.*

Your Honor, the District Attorney cannot now directly contradict these stipulated terms simply because it wants to see me confined as a sexually violent predator. For these reasons, and for all the reasons presented in this petition, I respectfully request the court to grant this petition, and allow me to withdraw my plea or dismiss the WIC §6600 et. seq., petition.

STATEMENT OF THE CASE

Petitioner Ruben Herrera is currently unlawfully detained at Coalinga State Hospital-Coalinga (CSH-C) a State Prison Hospital pursuant to the Fresno County District attorney's (FCDA) petition to commit him as a sexually Violent Predator (SVP) *Case No. 07CRSP678762*, and the Fresno County Superior Court's (per the Honorable Wayne Ellison, Dept. 54) finding of probable cause to support the commitment petition.

Petitioner alleges the fact that he is deliberately and unjustly detained by the State of California pending the adjudication of a Sexually Violent Predator or SVP petition filed against him by the FCDA's office. Petitioner's confinement and SVP proceedings against him are unjust and without any substantial merit because Petitioner has not been convicted of a "sexually violent offense, he has confidence and hope that the jurist will recognize and hear his plead for help, and the below is the reason why: Confidently, because Petitioner is innocent of any forcible sex offense, it is the way that the charges started is simply the Court Clerk made a mistake on his abstract of judgment. After the error, it was a domino effect that mislead everyone thereafter. Herein, it is thus an ineligible detainment for civil commitment under California's Sexually Violent Predator Act (SVPA). *(Cal. Welf. & Inst. Code § 6600 et seq.)*

Under the SVPA, a petition for civil commitment as a sexually violent predator can be maintained only against an individual that has been convicted of a sexually violent offense as defined in Section (b) of the statute. Petitioner was convicted pursuant to a plea agreement of non-forcible violations of *Cal. Pen Code §§ 288 (c) (1),* lewd act with a child of 14 or 15 years when the person is at least 10 years older than the child, and *286 (b) (2),* sodomy by a person over the age of 21 with a person under the age of 16. The victim of both of these Counts was the same, Jane Doe #1. The SVPA clearly states that in order for Petitioner's crimes to be considered sexually violent offenses and thus qualify as a necessary predicate conviction to maintain a SVP petition, they must be committed with force or involve a victim under the age of 14 years. Because Petitioner's plea agreement to these crimes contained an express stipulation by the prosecutor that the conduct under lying the offense was non-forcible [fn1], and because *PC 288 (c) (1)* requires that the victim not be under the age of 14 years, there is no uncertainty whatsoever that Petitioner's conviction does not qualify as a sexually violent offense under the SVPA.

The State of California now wishes to see Petitioner indefinitely detained as a SVP, despite the clear fact that Petitioner has not been convicted of a qualifying offense. In its effort to prosecute the SVP petition, against Petitioner, the State of has breached its plea agreement with him and argued that his conduct was, in fact, forcible and that the victim was in fact under the age of 14. By doing so, the state has violated Petitioner's constitutional right to Due Process and the Constitutional bar against Double Jeopardy. Consequently, his continued pre-trial detention is unconstitutional and requires the Supreme Court Jurist to intervene and grant federal habeas corpus relief that order the dismissal of the SVP petition and his immediate release from custody.

[fn1] After initially denying that Petitioner's plea agreement contained a stipulation that his crimes were non-forcible, the State conceded in its briefing to the California Supreme Court that the plea agreement did contain such a stipulation that Mr. Herrera's crimes were non-forcible.

REASONS FOR GRANTING THE PETITION

A federal court may only abstain from enjoining appending state criminal proceeding or a pending state civil proceeding that is akin to a criminal prosecution when three elements are satisfied. ***Younger v. Harris,*** *401 U.S. 37, (1971);* ***New Orleans Public Service, Inc. v. Counsel of New Orleans,*** *491 U.S. 350 (1998);* ***Sprint Commc'ns, Inc. v. Jacobs,*** *134 S.Ct. 584, 588 (2013).* The three elements required to warrant abstention under Younger are: 1.) there is an ongoing state judicial proceeding; 2.) the proceeding implicates important state interests; and 3.) there is an adequate opportunity in the state proceeding to raise constitutional challenges. ***Middlesex County Ethics Committee v. Garden State Bar Ass'n,*** *457 U.S. 423, 432 (1982).* However, even if all three elements are satisfied, a Younger abstention does not apply in cases where the pending state criminal proceedings create a threat of irreparable injury *(**Hunter v. King,** 2016 WL 3019119* at *2 (E.D.Cal. 2016);* ***Younger,*** *401 U.S.* at *53-54)* or when full vindication of a petitioner's constitutional rights requires federal intervention *(**Mannes v. Gillespie,** 976 F.2d 1310, 1312 (9th Cir. 1992)).*

In Petitioner's case, this Court may not abstain under Younger because there is not an adequate opportunity in the state proceedings for Petitioner to raise his constitutional challenges. Although it is true that federal courts should assume that state procedures will afford adequate opportunity for consideration of constitutional claims *(**Penzoil Co. v. Taxaco,** 481 U.S. 1, 15 (1987)),* the presumption is overcome by demonstrating that asserting his defense in state court "would not afford adequate protection." ***Middlesex County Ethics Committee,*** *457 U.S.* at *435* (quoting ***Younger v. Harris,*** *401 U.S. 45).* For example, federal courts may abstain from reviewing of the constitutionality of pretrial detention of a petitioner facing a SVP when the Petitioner can still raise his or her constitutional claim in the trial court or in the state court of appeals. ***Sykes v. Brown,*** *2016 WL 8731354* at *2 (E.D.Cal. 2016).*

Here, the California Courts have clearly demonstrated that the state courts would not afford Petitioner adequate protection of his constitutional rights. Petitioner has raised his claims—that he does not qualify as a sexually violent predator under the SVPA and thus the SVP petition against him, and his pre-trial detention pursuant to the SVP petition violate his constitutional rights—throughout the California court system. The Fresno County Superior Court denied Petitioner's motion to dismiss the SVP petition after Petitioner asserted that the SVP petition was barred by the fact that he has not been convicted of a sexually violent offense as required by the SVPA and that the doctrine of collateral estoppel as well as the California and United States constitutions bar the District Attorney's office from arguing in SVP proceedings that his convictions were for forcible conduct and/or that the victim was under the age of 14. After the Superior Court denied Petitioner's motion to dismiss, he appealed to the California Court of Appeal, which affirmed the Superior Court's denial. Petitioner then filed a petition for review in the California Supreme Court, which transferred the matter back to the California Court of Appeal. The Court of Appeal then dismissed the petition. Despite the California Courts' unwillingness to address the constitutional claims presented by Petitioner, he again raised these claims in state habeas petitions filed in each level of the California court system. Given the state courts' inability to address and adequately resolve the constitutional issues surrounding Petitioner's pre-trial detention, it is clear that petitioner's constitutional rights are not adequately protected. Thus, abstention under Younger is inappropriate.

In arguendo, even if this Court finds that the three requirements for abstention under Younger are satisfied, there two exceptions to Younger abstention that apply in Petitioner's case. First, Younger abstention does not apply in cases where extraordinary circumstances threaten great, immediate, and irreparable injury. ***Younger,*** *401 U.S.* at *45-46, 53-54* (state statute patently violated constitutional protections); ***Perez v. Ledesma,*** *401 U.S. 82, 85 (1971)* (Federal injunctive relief in pending state prosecution proper in cases of proven harassment or when prosecutions had no hope of obtaining a valid conviction). As explained in this petition, Petitioner's constitutional due process rights and freedom

from double jeopardy are being violated as a result of his pre-trial detention and the SVP proceeding against him. To qualify for commitment under the SVPA, the subject of the petition must have been convicted of a qualifying sexually violent offense. *(Cal. Welf. & Inst. Code §6600 et seq.)* In Petitioner's case, the State and Petitioner entered into a binding plea agreement where both parties agreed that his crimes were non-forcible and that they did not involve a victim under the age of 14. As a result, Petitioner's convictions do not qualify him for civil commitment under the SVPA [fn1] and the proceedings against him are unlawful. Consequently, Petitioner's continued illegal detention constitutes irreparable injury and this Court should not abstain under Younger.

Second, Younger abstention does not apply when "full vindication of the [constitutional] right necessarily requires intervention before trial." ***Mannes v. Gillespie,*** *976 F.2d 1310, 1312 (9th Cir. 1992).* For example, a federal court may not abstain from reviewing a claim that a Petitioner's pre-trial detention violates his constitutional right against double jeopardy because full protection under the double jeopardy clause requires intervention. Id. As explained below, Petitioner's pre-trial detention violates his right against double jeopardy.

Additionally, in Petitioner's case full vindication of his right to due process requires that this Court intervene. As explained in this petition, Petitioner's pre-trial detention and pending SVP petition violate Petitioner's right to due process. Specifically, Petitioner has a due process right to either specific performance of his plea to a *PC 288 (c) (1),* a *PC 286 (b) (2),* **both non forcible crimes,** dismissing the remaining charges. Petitioner agreed to this plea agreement and was thus convicted of violations of *PC section 288 (c) (1),* Count 2 as amended, lewd act with a child of 14 or 15 years when the person is at least 10 years older than the child, and *PC section 286 (b),* Count 3 as amended, sodomy by a person over 21 years with a person who is under the age of 16. Both of these counts were explicitly stipulated by the Deputy District Attorney as **non-forcible crimes.** Because both counts involved the same victim, Jane Doe #1, and count 2 requires the victim not be under 14 years of age, the parties stipulated to a factual basis to support the pleas that the victim was 14 or 15 years of age (consistent for both counts) and that the defendant was both at least 10 years older than the victim and a person over the age of 21 years of age. The Court found probable cause to accept Petitioner's plea to these offenses as charged.

On October 14, 2004, Petitioner was sentenced to two years in prison, but due to the time credits that he had accumulated prior to sentencing, he received a "paper commitment," and was placed on parole.

Petitioner subsequently failed to register pursuant to *Penal Code section 290* and was incarcerated. On February 6, 2006, Petitioner was sentenced to 16 months in state prison for violation of *Penal Code section 290.* Petitioner was paroled on June 15, 2006 and shortly thereafter removed his GPS monitor. Petitioner was arrested on June 19, 2007, for violation of parole.

On December 4, 2007, while Petitioner was incarcerated on his parole violation, the Fresno County District Attorney's Office filed a petition in Fresno Superior Court *(Case No. 07CRSP678762)* to have Petitioner declared a Sexually Violent Predator within the meaning of Welfare and Institutions Code 6600 et. seq. Petitioner was ordered held on the SVP petition pending trial, and has been fighting commitment since that time.

[fn1] Petitioner's crimes, violations of only qualify as sexually violent offenses under SVPA when committed by force, or when the victim is under the age of 14. (See Welfare and Institutions Code section 6600 (b) and 6600.1.)

SUPPLEMENTAL REASONS FOR GRANTING THE PETITION

Petitioner respectfully requests that the jurist does not disregard this case, or overlook the due process issues that pertain to the important meritorious claims, and allegations that are before them. Petitioner alleges that that he has brought his case to all of the State and Federal Courts, and he has exhausted thousands of dollars over many years. The previous courts have failed, refused, or simply just disregarded the essential elements of the plea for a fair assessment of the legal factors. Petitioner asserts that he comes before the Court with verifiable evidence. The type of evidence that is attached to the petition for *certiorari* is undisputable and intrinsic evidence that this case should have been resolved in the lower courts. However, because of the binding civil detainment order pursuant *Welf. & Inst. Code,* §6600 et seq., Petitioner has been hindered from the ability to seek due process of law. (**Appendix "1":** A page from the book titled: "*Unbuildable Hours*" written by Ian Graham.

As was indicated highlighted paragraph on page (2), Mr. Graham worked at the law firm of Lathan and Watkins. Mr. Graham spent most of his legal work grinding out memos and motions for fortune 500 companies, movie studios, and professional sports franchise in mega-million dollar litigation claims. In particular, it was Mr. Graham who was the attorney of record for many years, and he handled the case through the Eastern District Court as well as the State Courts. (**Appendix "2":** Attorney retainer and fee agreement). Had it not occurred that Petitioner's family, and himself had run out of finances, Mr. Graham would most likely have continued to represent as the attorney of record. Unfortunately, Petitioner is now left with the option of attempting to prove his innocence by himself, with the assistance of a jailhouse lawyer. Not the best of two legal minds but it is all that he has available.

To the facts of the case, Petitioner needs to accent the point that his case is a unique situation where he was charged with crimes of sex involving prostitutes, one of which was underage. Most importantly, Petitioner did not go to an elementary school, or middle school. Petitioner went to a highly known prostitution location. Through bad judgment he selected an attractive young woman who happened to be a prostitute that turned out to be underage. (**Appendix "3":** Investigation report dated May 5, 2003).

The reason for the appended document (c), the second paragraph, and *(... Identified as Confidential Victim/Suspect... [sic]).* The officer who made contact or touched the young woman's' breast was the same young prostitute Petitioner had intercourse with, and who is the prostitute that was not of legal age when they attempted to entrap her for soliciting illegal sex. Thus, the Court should take into consideration if the two trained detectives were unable to distinguish the difference of her age from other prostitutes, then Petitioner could easily have made the same mistake about her age as well.

Petitioner asserts that he has never given up his right to defend against forcible charges because he is aware of his rights. Once again, if anyone gave up the right to continue to prosecute the case as "forcible", the failure would fall on the District Attorney's office. The Petitioner accepted the plea bargain as "non-forcible", that is all, nothing more. Therefore, the prosecution is bound by the agreement, and obligated by law to pursue the **original terms** of the plea agreement. The prosecution should be barred by time limitation, and the Petitioner's right to effective assistance especially since it was a plea deal made in the interest of justice, which were the grounds that allowed the plea to be accepted. Further, to go up against the [plea agreement] at this point of his civil proceedings would be a violation of his right to a due process guarantee pursuant the Fourteenth Amendment.

Once more, Petitioner claims that the clerical error has influenced many legal determinations where the prosecution has attempted to push against what has already been adjudicated, as if it was a conviction of Forcible charges. Notwithstanding, Petitioner request that the Jurist analyze closely the

convictions within the transcripts that reference: California Penal Code *§288(c) (1),* and California Penal Code*§286(b) (2).* (**Appendix "4":** Preliminary hearing transcripts, pages 1-61).

Specifically, Petitioner ask the Jurist to recognize that he had no idea when the young woman was born. He certainly had not looked at her birth certificate to figure out her age. The main concern was the fact that she was soliciting herself for sex, and she was a prostitute in a visible location for prostitution. Furthermore, the Jurist should note that one of the charges was a conviction for sodomy. As was indicated earlier, it was never an alleged charge in the **original charges, arraignment, preliminary hearing(s),** or any other proceedings. To make clear, the facts of the case, the young woman performed oral sex, and she agreed to have sexual intercourse which was consensual; however, Petitioner never paid for the sexual acts. Nevertheless, Petitioner realizes that it was one of the biggest mistakes of his life, and it is one that he continues to regret to this day.

Hence, Petitioner pleads with the Court to pay close attention to the submitted preliminary hearing transcripts from April 20, 2004. you will see that there is no indication off sodomy ever stipulated or charged in regards to any previous convictions (no allegations, accusations, or supporting documentations at all). Frankly, Petitioner claims that when he had Ian Graham as his hired attorney, he did a remarkable job of litigating his case. Needlessly, Mr. Graham's services were just too costly to continue to retain his representation for the issue of "Legal Error." Mr. Graham's main argument to the Court that the Court should honor the plea agreement. Petitioner explained to Mr. Graham that there were other important issues he should consider, but Mr. Graham did not pursue or consider other issues. He rejected all other suggestions because he felt that the most important single issue that the Court needed to recognize was the plea agreement, and it was all he addressed. (**Appendix "5":** Petition for writ of habeas Corpus).

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: December 11, 2018