No. 19-5051

# In The Supreme Court of the United States

ARMANDO DUARTE ISLAS, JR.,
*PETITIONER*,

v.

CHARLES L. RYAN, DIRECTOR,
ARIZONA DEPARTMENT OF CORRECTIONS,
AND
MARK BRNOVICH, ATTORNEY GENERAL,
OF THE STATE OF ARIZONA,
*RESPONDENTS*.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI





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PETITIONER *PRO SE*

## QUESTIONS PRESENTED

BY THE SPRING OF 2014, PETITIONER ARMANDO D. ISLAS, JR. HAD ACCUSTOMED HIMSELF TO WHAT HAD BECOME A SOLITARY, YET PLEASANT ENOUGH LIFE, AFTER THE PARTING OF HIS FATHER A FEW YEARS EARLIER. HE HAD FOUND THE RHYTHM OF GETTING AROUND ON HIS BICYCLE AND COLLECTING ALUMINUM CANS FOR SALE TO RECYCLERS OR SCRAP DEALERS; AND LOOKING FOR DISCARDS THAT COULD BE REFURBISHED AND SOLD, SUCH AS RADIOS OR CELL PHONES. HE LIVED BY HIMSELF, ATE SIMPLY, AND READ FOR ENJOYMENT, INCREASINGLY IN THE BIBLE. HE MET, OVER TIME, OTHERS LIKE HIM, AND EVENTUALLY TOOK TO WORKING WITH ONE — AURELIO "CHATA" FELIX.

AROUND THAT SAME TIME, ANOTHER PERSON WHOLLY UNKNOWN TO HIM, ROBERT JOHN, A NATIVE AMERICAN, WAS APPROACHING A CRISIS IN HIS LIFE. HE HAD BEEN FREQUENTING THE DESERT DIAMOND CASINO IN THE TOHONO O'ODHAM NATION SOUTH OF TUCSON, ARIZONA. HE ALSO HAD BECOME A HEROIN ADDICT AS AN UNFORTUNATE EXTENSION OF HIS LIFE STYLE. ON THE NIGHT OF 23 APRIL 2014, MR. JOHN WAS ARRESTED AT THE CASINO, AND FOUND TO BE IN POSSESSION, AND UNDER THE INFLUENCE OF HEROIN. HE WAS OFFERED AN OPPORTUNITY TO HAVE A SIGNIFICANTLY REDUCED CONSEQUENCE IF HE GAVE THE INVESTIGATORS THE ACCESS TO HIS SUPPLIER. A BEVY OF FEDERAL AGENCIES PARTICIPATED, INCLUDING HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), DRUG ENFORCEMENT AGENCY (DEA), NATIVE AMERICAN TARGETED INVESTIGATION OF VIOLENT ENTERPRISES (NATIVE), AS WELL AS THE TOHONO O'ODHAM NATION POLICE.

ON 1 MAY 2019, THE PETITIONER ARRIVED AT ONE OF HIS BEST COLLECTION SITES, THE GAS STATION AND NEIGHBORING CAR WASH ON THE APRON OF LAND ADJOINING THE VETERANS ADMINISTRATION MEDICAL CENTER AT 3601 S. 6th AVENUE IN TUCSON. UNBEKNOWNST TO HIM, CHATA HAD BEGUN TO DABBLE IN DRUG SALES, AND HAD BEEN THE VENDOR TO MR. JOHN. CHATA HAD BEEN UNUSUALLY ACTIVE AND NERVOUS THAT DAY, AND HAD RECENTLY BEEN MAKING MUCH MORE USE OF THE PHONES THAT HAD BEEN FOUND.

AS HE WAS LOADING A BAG OF CANS ONTO HIS BIKE, THE PETITIONER AND HIS ASSISTANT FOUND THEMSELVES SURROUNDED BY FEDERAL AGENTS ORDERING THEM TO THE GROUND, BEING HANDCUFFED, AND TRANSPORTED TO THE TOHONO O'ODHAM NATION POLICE HEADQUARTERS FOR PROCESSING. HOWEVER, THEY WERE NOT CHARGED UNDER FEDERAL LAW, BUT RATHER, WERE TRANSFERRED TO PIMA COUNTY FOR PROSECUTION.

SURPRISINGLY, FOR SUCH AN ARRAY OF OFFICERS, NO DIRECT OBSERVATION OF THE PETITIONER HAD OCCURRED; THE $20 BILLS USED TO BUY FROM MR. FELIX NOT PHOTOCOPIED OR OTHERWISE IDENTIFIED; AND ROBERT JOHN AS THE "SOURCE OF INFORMATION", WHO HAD MADE A TAPE OF HIS CONVERSATION WITH FELIX, BUT ALLEGED TO BE "MANDO", RAN OFF TO THE SKOKOMISH RESERVATION IN WASHINGTON STATE, AND NOT MADE AVAILABLE FOR CROSS-EXAMINATION AGAINST EITHER THE PETITIONER OR MR. FELIX.

1. WAS ARIZONA ABSENT OF JURISDICTION OVER EVENTS THAT OCCURRED ON LANDS UNDER EXCLUSIVE FEDERAL AUTHORITY, AND INVESTIGATED EXCLUSIVELY BY AGENCIES UNDER FEDERAL ORGANIZATION?
2. DID THE DENIAL OF SIXTH AMENDMENT CONFRONTATION CLAUSE RIGHTS CONSTITUTE GROUNDS FOR VACATING THE JUDGMENT AND SENTENCE UPON THE ATTACHMENT OF CONSEQUENCE OF JEOPARDY FOR OVER FIVE YEARS?
3. DOES THE WILLFUL AND SERIAL DENIAL OF ATTEMPTS TO DEMONSTRATE ACTUAL INNOCENCE, BY BOTH COURTS AND COUNSEL, PRESENT AT A MINIMUM, THE DEBATABLE QUALITY NECESSARY TO RECEIVE A COA, IF NOT THE THOROUGH REVIEW TO VACATE, IN THE ABSENCE OF PROOF BEYOND A REASONABLE DOUBT?
4. DOES THE CAVALIER MISHANDLING OF REVIEW, LIKELY BY CLERKS OF THE CIRCUIT COURT, IN ITSELF PRESENT SUCH VIOLATION OF DUE PROCESS AS TO REQUIRE REVIEW FOR ACTUAL INNOCENCE UNDER § 2254?

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## OPINIONS BELOW

THE OPINIONS OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT APPEAR AT APPENDIX C TO THE PETITION AND ARE NOT KNOWN TO BE PUBLISHED. THE ORDERS OF THE DISTRICT COURT APPEAR AT APPENDIX A TO THE PETITION AND ARE NOT KNOWN TO BE PUBLISHED. THE MEMORANDUM DECISIONS OF THE ARIZONA COURT OF APPEALS ON DIRECT AND COLLATERAL REVIEW, AND THE MINUTE ENTRY ORDER OF THE SUPERIOR COURT ON COLLATERAL REVIEW APPEAR AT APPENDIX B TO THE PETITION AND ARE NOT KNOWN TO BE PUBLISHED.

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## JURISDICTION

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DECIDED THIS CASE ON 26 APRIL 2019. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 USC § 1254.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### CONSTITUTIONAL PROVISIONS

#### AMENDMENT V

> "NO PERSON SHALL ... BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW." BILL OF RIGHTS, 15 DECEMBER 1791.

#### AMENDMENT VI

> "[T]HE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY ...; 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 DEFENCE." *Id.*

#### AMENDMENT XIV

> "[N]O STATE SHALL ... DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS." 14 Stat. 358, 28 JULY 1868.

#### ARTICLE I, § 8, CL. 3

> "TO REGULATE COMMERCE WITH FOREIGN NATIONS, AND AMONG THE SEVERAL STATES, AND WITH THE INDIAN TRIBES;" 17 SEPTEMBER 1787.

ENABLING ACT, 36 US Stat. 557, 568-579 [FOR STATEHOOD of TERRITORY of ARIZONA]

> "§ 20. [S]ECOND. THAT THE PEOPLE INHABITING SAID PROPOSED STATE ... DECLARE THAT THEY FOREVER DISCLAIM ALL RIGHT AND TITLE ... TO ALL LANDS ... OWNED OR HELD BY ANY INDIAN OR ANY INDIAN TRIBES ... SHALL BE AND REMAIN ... UNDER THE ABSOLUTE JURISDICTION ... OF THE CONGRESS" 20 JUNE 1910. ARIZONA CONSTITUTION, Art. XX, FOURTH.

STATUTORY PROVISIONS

28 USC §§ 2072, 2075
FED. R. APP. PROC. 35(b)(1)(A)
9th CIR. R. 35-3 AND G.O. 5.4(3)

SUPREME COURT ORDER, 29 APRIL 1994

"2. DUTIES OF CLERK. UPON THE FILING BY A PARTY OF A PETITION FOR REHEARING *en banc*, THE CLERK SHALL CIRCULATE A COPY TO EACH ACTIVE JUDGE AND TO THOSE SENIOR JUDGES WHO HAVE REQUESTED COPIES." 9th CIR. G.O. 5.4(2). EMPH. ADDED.

18 USC § 1152 LAWS GOVERNING WITHIN LANDS OF INDIGENOUS PERSONS

PROVIDING FOR . . . THE GENERAL LAWS OF THE UNITED STATES AS TO THE PUNISHMENT OF OFFENSES COMMITTED IN ANY PLACE WITHIN THE SOLE AND EXCLUSIVE JURISDICTION OF THE UNITED STATES, SHALL EXTEND TO THE LANDS OF INDIGENOUS PEOPLE.

§1154 INTOXICANTS DISPENSED WITHIN SUCH LANDS

WHOEVER SELLS, GIVES AWAY, . . . OR ANY ARTICLE WHATSOEVER, UNDER ANY NAME, LABEL, OR BRAND, WHICH PRODUCES INTOXICATION, . . . OR TO ANY PERSON TO WHOM A TRUST OF LAND HAS BEEN MADE, . . . OR TO ANY WHO IS A WARD OF THE GOVERNMENT, . . . FOR THE FIRST OFFENSE, BE FINED . . . AND FOR EACH SUBSEQUENT OFFENSE, . . . NOT MORE THAN FIVE YEARS.

§1156 INTOXICANTS POSSESSED UNLAWFULLY

§1162 STATE JURISDICTION OVER OFFENSES

(ONLY ALASKA, CALIFORNIA, MINNESOTA, NEBRASKA, OREGON, AND WISCONSIN HAVE CONCURRENT JURISDICTION OVER INDIGENOUS LANDS)

§1166 GAMBLING ON LANDS OF INDIGENOUS PEOPLE

(d) THE UNITED STATES SHALL HAVE EXCLUSIVE JURISDICTION OVER CRIMINAL PROSECUTIONS OF STATE GAMBLING LAWS THAT ARE MADE APPLICABLE UNDER THIS SECTION.

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## STATEMENT OF THE CASE

A MORE COMPREHENSIVE STATEMENT OF THE CASE IS FOUND IN THE APPELLANT'S OPENING BRIEF IN THE DIRECT APPEAL, INCLUDED AT APPENDIX E, WHICH ALSO PROVIDES A USEFUL DIRECTORY TO CITATIONS IN THE TRIAL RECORD, AS WELL AS A POWERFUL DEMONSTRATION OF THE ERROR IN THE ASSERTION IN THE DECISION OF THE ARIZONA APPELLATE COURT ON DIRECT APPEAL THAT A CRAWFORD CHALLENGE HAD NOT BEEN MADE AT TRIAL. IT MAY BE READ IN AUGMENTATION OF THE BACKGROUND IN THE QUESTIONS PRESENTED.

ADDITIONALLY, TRIAL EXHIBITS TO BETTER UNDERSTAND THE EVIDENCE PRESENTED IS FOUND AT APPENDIX F, WHICH INCLUDE AMONG ITS ENTRIES : (1) THE INVESTIGATION REPORT BY THE DEPARTMENT OF HOMELAND SECURITY; (2) THE PRE-TRIAL INTERVIEW OF DET. RAY ELKDREAMER OF THE TOHONO O'ODHAM NATION POLICE IN THE PRESENCE OF ALL PARTIES' COUNSEL; AND (3) THE OPENING STATEMENT TRANSCRIPT OF PROSECUTION AND DEFENSE COUNSEL, ALL OF WHICH SHED LIGHT ON THE ARGUMENTS HERE PRESENTED

ALL OF WHICH HELP TO UNDERSTAND THE EFFORTS TO OBTAIN RELIEF UNDER § 2254 IN BOTH THE DISTRICT AND CIRCUIT COURTS, BUT SERVE TO FURTHER QUESTION HOW AND WHY THOSE FEDERAL FORUMS EFFECTIVELY SUSPENDED ACCESS TO HABEAS, IN THEIR DENIAL OF COAS BY MEANS BEREFT OF DUE PROCESS.

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## REASONS FOR GRANTING THE PETITION

### I. THE DECISION OF THE NINTH CIRCUIT IS FLAWED AND ERRONEOUS

THE LAST PROCEDURAL BARRIER ENCOUNTERED, IN THE PATH FIRST OBSTRUCTED IN THE TRIAL COURT, WAS TO DEMONSTRATE ACTUAL INNOCENCE UPON THE CHARGES AS PRESENTED, UPON ITS FACE, WITHOUT NEED FOR ELABORATED LITIGATION UPON THE SUBJECT FACT SET.

SADLY, IN THIS INSTANCE, THE NINTH CIRCUIT DID NOT PERFORM PURSUANT TO ITS OWN LOCAL RULES, NOR AS A RESULT, WITH THE MANDATE FOR DUE PROCESS EXPECTED OF A COURT OF THE UNITED STATES. SPECIFICALLY, IN ITS DENIAL OF A CERTIFICATE OF APPEALABILITY, ONLY A CURT BOILERPLATE DENIAL WAS GIVEN, WITHOUT ANY INDICATION OF THE MATTERS PRESENTED TO IT, AND IN APPARENT OBLIVION TO THIS COURT'S RECENTLY ESTABLISHED STANDARD:

> "WHEN A COURT OF APPEALS SIDESTEPS [THE COA] PROCESS BY FIRST DECIDING THE MERITS OF AN APPEAL, AND THEN JUSTIFYING ITS DENIAL OF A COA BASED ON ITS ADJUDICATION OF THE ACTUAL MERITS, IT IS IN ESSENCE DECIDING AN APPEAL WITHOUT JURISDICTION." BUCK V. DAVIS, 580 US__, SLIP OP AT 13 (2017), CITING MILLER-EL V. COCKRELL, 537 US 322, 336 (2003).

TAKING THE LIBERTY THEN, TO ADDRESS THE LAST PRESENTED QUESTION FIRST, TO PERMIT THE FULLEST UNDERSTANDING OF HOW THE PIECES OF THIS LEGAL PUZZLE FIT TOGETHER, WE QUICKLY SEE THAT UPON ITS SECOND OPPORTUNITY TO RECOGNIZE THE PRESENCE OF ACTUAL INNOCENCE, AND TO AFFORD RELIEF ON CONSIDERATION OF THAT BASIS, BY WAY OF PRESENTATION THROUGH A PROPERLY FILED PETITION FOR REHEARING *en banc*, THE CURCUIT COURT, AT LEAST THROUGH ITS CLERKS, FAILED TO OBSERVE THE NORMS OF DUE PROCESS.

THE PETITION FOR REHEARING *en banc* WAS IN FULL COMPLIANCE WITH FRAP 35(b)(1)(A), 9th CIR. R. 35-3, AND 9th CIR. G.O. 5.4(a), BUT UPON ITS FILING, WAS NOT DISTRIBUTED TO ALL ACTIVE JUDGES, AND TO THOSE SENIOR JUDGES WHO REQUESTED COPIES. INSTEAD, IT WAS ASSIGNED TO A TWO JUDGE PANEL (O'SCANNLAIN AND GOULD) DIFFERENT FROM THAT WHICH HAD APPEARED ON THE ORDER IN FIRST INSTANCE (TROTT AND MURGUIA), BUT WITH THE TEMERITY TO ASSERT, THAT ON BEHALF OF THE COURT, IT WOULD CONSTRUE THE PETITION AS A MOTION FOR RECONSIDERATION, THEREBY GUARANTEEING ITS DENIAL, WITHOUT FURTHER CONSIDERATION, INCLUDING BEING READ AT ALL.

THE PROOF OF THAT AFFRONT TO DUE PROCESS CAN BE READILY DEMONSTRATED WHERE, AS SHOWN IN THE SUBJECT ORDERS IN APPENDIX C, BOTH THE FIRST APPLICATION FOR THE COA, AND THE PETITION FOR REHEARING *en banc*, WERE EACH TWINNED WITH ANOTHER CASE OF WILDLY DISPERATE CIRCUMSTANCES, IN 9th CIR. No. 18-16883,[1] TO SUCH DEGREE, THAT BUT FOR THE NAME AND DOCKET NUMBER, ARE ABSOLUTE CLONES OF THE OTHER. THAT THIS MAY HAVE OCCURRED IN THE FIRST APPLICATION MAY HAVE BEEN PRODUCED AT THE OUTER LIMIT OF PROBABILITY. THE SECOND, OF THE PETITION, WHERE THAT IMPROBABLE CURIOSITY HAD BEEN CALLED TO QUESTION, REVEALED THE DISREGARD FOR, AND DISRESPECT OF THE BEATEN DOWN PRISONER HANGING ON THE HOPE OF CONSTITUTIONALLY PROVIDED MEANS FOR RELIEF, BUT INSTEAD FINDS THE SECOND HIGHEST COURT IN THE COUNTRY IN VIOLATION OF ITS STATUTORY AND JURISDICTIONAL OATH, MANDATING THE SWIFT AND EFFECTIVE OVERSIGHT CONTEMPLATED FOR THIS LAST FORUM FOR JUSTICE UNDER Art. III.

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1) RECENTLY APPLIED FOR CERTIORARI IN THIS COURT, MINTZ V. RYAN.

## II. IMPORTANT ISSUES OF LAW HAVE NOT BEEN DECIDED

### A. ARIZONA WAS ABSENT OF JURISDICTION

HAVING SET THE CONTEXT IN WHICH THE CIRCUIT COURT FAILED TO PERFORM AS REQUIRED IN REVIEW OF THE INITIAL PRESENTATION, AND AGAIN ON PETITION FOR ITS REHEARING., WE TURN TO THE BASIS OF THE CLAIMS WHICH CLEARLY MERITED FAVORABLE DISPOSITION.

THE FACTS IN THIS CASE HAVE BEEN AMPLY AND FULLY KNOWN FROM ITS VERY OUTSET, AND ARE CONSISTENTLY STATED THROUGHOUT ALL THE APPENDED EXHIBITS, PERHAPS MOST SUCCINCTLY IN THE VERY EARLIEST INVESTIGATION REPORT, BY HOMELAND SECURITY, DATED 7 MAY 2014, FOUND IN APPENDIX F, IN 3 PAGES. IT IS CONSISTENT WITH, AND SUPPLEMENTED BY AN INTERVIEW OF DET. RAY ELKDREAMER OF THE TOHONO O'ODHAM NATION POLICE, IN THE PRESENCE OF COUNSEL FOR BOTH PIMA COUNTY CO-DEFENDANTS AND PROSECUTOR, IN 25 PAGES; AND TRANSCRIPT OF THE OPENING ARGUMENTS AT TRIAL BY PROSECUTOR, AND COUNSEL FOR THIS PETITIONER IN 11 PAGES.

THE SALIENT FACTS RELEVANT FOR THE MOST BASIC AND ESSENTIAL INQUIRY OF THE TRIAL COURT TO ASCERTAIN ITS JURISDICTION[2] INCLUDE:

1) A TASK FORCE WAS ASSEMBLED TO INVESTIGATE THE USE AND SALES OF DRUGS, HERE REFERENCING HEROIN, AT THE DESERT DIAMOND CASINO, LOCATED WITHIN THE TOHONO O'ODHAM NATION LANDS, IN THE VICINITY OF SELLS, ARIZONA, SOUTH OF TUCSON, ASSIGNED 14 MARCH 2014. SEE, APPENDIX F, REPORT, p. 1, ln 3, DATED 5/7/14, DISCLOSED 5/19/14.

2) THE TASK FORCE, DESIGNED TO RESPOND TO MATTERS OF INDIAN AFFAIRS ON LANDS DESIGNATED UNDER FEDERAL GRANT (THE COMMERCE CLAUSE, Art. I, § 8, cl. 3) AND RECOGNIZED AS SOVEREIGN BY THE SURROUNDING STATE (ARIZONA CONSTITUTION, Art. XX, FOURTH), WAS CENTERED ON ITS EXISTING COLLABORATIVE ARRANGEMENT, N.A.T.I.V.E. (NATIVE AMERICAN TARGETED INVESTIGATIONS OF VIOLENT ENTERPRISES) INCLUDED: THE TOHONO O'ODHAM NATION POLICE, US IMMIGRATION AND CUSTOMS ENFORCEMENT, HOMELAND SECURITY INVESTIGATIONS, DRUG ENFORCEMENT AGENCY (DEA), AND US BORDER PATROL, ALL FEDERAL AGENCIES. APPENDIX F, REPORT, p. 2.

3) THE INSTANT PORTION OF THE RELEVANT ACTIVITY BEGAN 25 APRIL 2014 AT THE CASINO WHEN A NATIVE AMERICAN CUSTOMER NAMED ROBERT JOHN HAD LAW ENFORCEMENT CONTACT WITH NATIVE TASK FORCE DET. RADCLIFF AND DET. ELKDREAMER, FINDING HIM IN POSSESSION OF HEROIN. APPENDIX F, RT, OPENING ARGUMENT, PIMA COUNTY Nº CR 2014-2017-002, LAURA ROUBICEK, ESQ., PIMA COUNTY ATTORNEY, p. 3. AS IS CUSTOMARY IN SUCH CIRCUMSTANCES, LENIENCY IS OFFERED FOR ASSISTANCE.

4) MR. JOHN MADE ARRANGEMENT BY TELEPHONE TO MEET "MANDO" THE PARTY WHO HAD DELIVERED HIS HEROIN, AT A CAR WASH ADJOINING THE VETERANS ADMINISTRATION MEDICAL CENTER AT 6th St. AND AJO IN TUCSON, WHERE HE EXCHANGED 7-$20 BILLS ($140) FOR AN "EIGHT BALL" (1/8 oz. OR 3.5 gm) OF HEROIN TO AURELIO FELIX, WHO HAD BEEN HELPING THE PETITIONER IN HIS COLLECTION OF RECYCLABLE DISPOSED ITEMS, SUCH AS ALUMINUM CANS AND ELECTRONIC DEVICES. APPENDIX F, REPORT, p. 2, ¶2; INTERVIEW, p. 12-13 of 25, ln 3(12) - ln 25(13). THE CALL ORIGINATED FROM THE DEA OFFICE. INTERVIEW, p. 4 of 25, ln 33, 3/29/14. BY MR. L. UZUNOVA COUNSEL FOR FELIX, QUESTIONING DET. ELKDREAMER.

5) FOLLOWING THE STING OPERATION RESULTING IN THE ARREST OF THE PETITIONER, AND OF HIS COLLECTION BUSINESS ASSISTANT, AURELIO FELIX, THE "SOURCE OF INFORMATION" CONFIDENTIAL INFORMANT, ROBERT JOHN, LEFT HIS RESIDENCE IN THE TOHONO O'ODHAM NATION, AND IS BELIEVED TO HAVE RELOCATED TO A RELATED TRIBE'S LAND WITH THE SKOKOMISH PEOPLE NEAR PUGET SOUND IN WASHINGTON STATE. APPENDIX F, INTERVIEW, MR. S. DEHAAN QUESTIONING DET. ELKDREAMER, p. 24 of 25, ln 39 - p. 25 of 25, ln 33. (END).

2) AS CONTEMPLATED IN SEC v. US REALTY, 310 US 434, 457-58 (1940), CITING In re ETTINGER, 76 F.2d 741, 742 (2ND CIR 1935).

THE FOREGOING FACTS, WHEN CONSIDERED IN THE LIGHT OF CONSTITUTIONAL AND STATUTORY PROVISIONS, LEAD TO THE FOLLOWING INESCAPABLE CONCLUSIONS:

1) THE INVESTIGATION BEGAN, AND AROSE FROM, EVENTS AT THE DESERT DIAMOND CASINO, LOCATED ON LANDS WITHIN THE TOHONO O'ODHAM NATION, UNDER THEIR SOVEREIGN LAWS, EFFECTED UNDER ART. I, § 8, CL. 3 OF THE CONSTITUTION OF THE UNITED STATES, AND UNDER SUCH LAWS INCLUDING *INTER ALIA* 18 USC § 1151, WHERE § 1152 PROVIDES FOR

"THE SOLE AND EXCLUSIVE JURISDICTION OF THE UNITED STATES".

2) AS A RESULT, SAID INVESTIGATION WAS UNDERTAKEN AS SET FORTH IN THE INVESTIGATIVE REPORT EXCLUSIVELY BY AGENCIES UNDER THE DIRECT OR AFFILIATE AUTHORITY OF THE ATTORNEY GENERAL.

3) AS A CRITICAL AND NECESSARY PART OF SUCH INVESTIGATION, THE SOURCE OF INFORMATION, MR. ROBERT JOHN, OVER THE PERIOD FROM HIS BEING TAKEN INTO CUSTODY 25 APRIL 2014, TO 1 MAY 2014, WAS TAKEN TO THE DRUG ENFORCEMENT AGENCY (DEA) OFFICE, WHERE HE MADE PHONE CALLS TO THE NUMBER WHICH HAD BEEN GIVEN, WHILE ELECTRONIC MEANS WERE UTILIZED TO INTERCEPT, RECORD, AND LISTEN TO THE SUBSTANCE OF SAID CALLS, UNDER THE AUSPICES OF NATIVE AND ITS ASSOCIATED FEDERAL AGENCIES. OPENING ARGUMENT, P. 3, ln 15.

4) THE ARRANGEMENTS MADE THEREFROM RESULT IN A MEETING AT A CAR WASH ADJACENT TO AND ON THE PERIPHERAL ZONE OF THE VETERANS ADMINISTRATION MEDICAL CENTER, UPON LANDS UNDER THE SPECIAL TERRITORIAL JURISDICTION OF THE UNITED STATES UNDER 18 USC § 7 (3), RESERVED AND NEVER CEDED TO ARIZONA FOR THE "NEEDFUL BUILDING" OF THE MEDICAL CENTER.

5) FOLLOWING THE STING OPERATION, WHICH TOOK MR. FELIX IN TO CUSTODY FOR HIS DELIVERY OF SUBSTANCE TO, AND RECEIPT FROM MR. JOHN IN THE PRESENCE OF A FEDERAL AGENT, MR. FELIX RETURNED TO AN ADJACENT ALLEY, WHERE HE AND PETITIONER HAD BEEN COLLECTING CANS, AND ALMOST IMMEDIATELY THEREAFTER, BOTH WERE TAKEN INTO CUSTODY. THEY WERE THEN TRANSPORTED TO THE TOHONO O'ODHAM NATION POLICE DEPARTMENT FOR PROCESSING. SEE, APPENDIX F, REPORT, P. 4, ¶ 2, 5/7/14.

THUS, FROM BEGINNING TO END, THE INVESTIGATION: (1) OCCURRED ON LANDS UNDER THE EXCLUSIVE JURISDICTION OF THE UNITED STATES; (2) WAS INVESTIGATED BY OFFICERS WORKING UNDER OR IN CONJUNCTION WITH AGENCIES UNDER THE CONTROL OF THE ATTORNEY GENERAL; AND (3) AS SUCH, WERE OBLIGATED TO ENFORCE THE LAWS, TREATIES, AND POLICIES OF THE UNITED STATES.

FOLLOWING THE OPERATION, MR. JOHN LEFT, AND AS NOTED ABOVE, BECAME RESIDENT WITHIN THE SKOKOMISH RESERVATION IN WASHINGTON STATE, AS WILL BE MORE THOROUGHLY DISCUSSED IN THE NEXT SECTION. LITTLE OR NO EFFORT WAS EXTENDED TO SEEK HIS RETURN TO TESTIFY.

HOWEVER, FOR THIS FOCUS, WE DIRECT OUR ATTENTION TO THE MOVEMENT OF THE PETITIONER UPON HIS CUSTODY, AND MORE GENERALLY, THE PROCEDURES OF THE INVESTIGATING OFFICERS IN THEIR INQUIRIES.

BOTH THE PETITIONER AND HIS CO-DEFENDANT, MR. FELIX (LISTED AS DEFENDANT "001"), WERE TAKEN TO THE TOHONO O'ODHAM NATION POLICE DEPARTMENT, AS NOTED IN 5 *SUPRA*, AN AGENCY OPERATING UNDER FEDERAL AND TRIBAL LAW, EXCLUSIVE OF THE STATE. AS BOTH WERE IN PAIN FROM THE MANNER IN WHICH THEY WERE HAND CUFFED, WITH KNEES ARCED TO THE SMALL OF THEIR BACKS WHILE PRONE, THEY WERE TAKEN TO ST. MARY'S HOSPITAL, WHILE A TOHONO O'ODHAM DETECTIVE WAITED. THEY WERE THEN TAKEN TO PIMA COUNTY JAIL AND BOOKED INTO CUSTODY OF THE STATE ON 1 MAY 2014, AND AN INDICTMENT FOLLOWED FOR BOTH ON A SINGLE COUNT OF SALE UNDER ARS § 13-3408 (A)(7), ALLEGING SUCH OCCURRED "[I]N PIMA COUNTY," NOT ISSUED UNTIL 12 MAY 2014. SEE, APPENDIX F.

HOWEVER, WHILE THE CONSTITUTION OF ARIZONA AT Art. XX, FOURTH RECOGNIZES THE AUTONOMY OF INDIAN LANDS AND THE EXCLUSIVE JURISDICTION THEREUPON, OR UPON LANDS WITHIN THE SPECIAL TERRITORIAL JURISDICTION OF THE UNITED STATES, AS ABOVE NOTED, IT NEITHER (1) ISSUED A DEMAND FOR EXTRADITION; (2) FILED A TIMELY INDICTMENT PURSUANT TO WHICH SUCH A DEMAND MAY HAVE ISSUED, UNDER 18 USC § 3182 or § 3183, TO ANY OF THE AGENCIES OF THE UNITED STATES, OR TO THE UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA; NOR (3) TO THE PROSECUTING AUTHORITY OF THE TOHONO O'ODHAM NATION UNDER ARS §13-3869, THEREBY ALSO EXPOSING THOSE AGENTS RESPONSIBLE FOR SUCH UNLAWFUL TRANSFER, UNDER ARS §13-3850.

EFFECTIVELY, ARIZONA WAS WITHOUT JURISDICTION OF THE CAUSE OF ACTION AS CHARGED, THEREBY PROVIDING A DISPOSITIVE GROUND FOR RELIEF UNDER 28 USC §2254(a), AS IT CAN READILY BE DEMONSTRATED THAT:

> "HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES,"

AND AS RECOGNIZED IN ARIZONA V. MANYPENNY, 451 US 232, 236 FN 6 (1981), FROM ITS CIRCUIT CASE 608 F.2d 1197, FN 2 (9th CIR 1979), ACQUITTAL UNDER THE PRINCIPLE ANNOUNCED IN IN RE NEAGLE, 135 US 1 (1890), ON JURISDICTION, CITING CLIFTON V. COX, 549 F.2d 722 (9th CIR 1977)., FROM DISTRICT COURT, 445 F. Supp. 1123 (D AZ 1977).

B. THE DENIAL OF SIXTH AMENDMENT CONFRONTATION CLAUSE RIGHTS

THE TRIAL ADMITTED THE TAPED CONVERSATIONS BETWEEN MR. JOHN, THE "SOURCE OF INFORMATION", AND "MANDO" THE PARTY WHO HAD DELIVERED HEROIN TO HIM AT BOTH THE DESERT DIAMOND CASINO, AND AT THE CAR WASH ADJACENT TO THE VETERAN'S HOSPITAL.

THE STATE, AND BOTH THE TRIAL AND APPELLATE COURT, ALTHOUGH ENTERTAINING A SIGNIFICANT OBJECTION TO ITS ADMISSIBILITY, ULTIMATELY REJECTED ONE OF THE MOST CRITICAL, IF NOT EXISTENTIAL RIGHTS PROVIDED TO THE ACCUSED UNDER THE CONSTITUTION OF THE UNITED STATES – CONFRONTATION.[3]

AS NOTED IN CRAWFORD V. WASHINGTON, 541 US 36, 43 (2004)

> "THE RIGHT TO CONFRONT ONE'S ACCUSERS IS A CONCEPT THAT DATES BACK TO ROMAN TIMES. SEE, COY V. IOWA, 487 US 1012, 1015 (1988).
>
> THE COMMON-LAW TRADITION IS ONE OF LIVE TESTIMONY IN COURT SUBJECT TO ADVERSARIAL TESTING."

WHICH IMPLIES THAT THE LIVE TESTIMONY IS THE NECESSARY GRIST, WHICH IN THE PRESENCE OF THE ADVERSARIAL MACHINERY ALLOWS THE MILL OF THE JURY TO PRODUCE THE FLOUR FROM WHICH THE BREAD OF JUSTICE MAY SUSTAIN ALL, AND NOT MERELY THOSE WHO RUN ITS GEARS.

THE TRIAL AND APPELLATE COURTS FOUND THE OBJECTION MERELY TO BE TO "THE FOUNDATION" OF THE PRESENTATION OF THE RECORDING, AND NOT TO THE CORE ISSUE PRESENTED IN CRAWFORD. THE STATE ATTEMPTED TO DISTINGUISH THE CIRCUMSTANCES TO FIND REFUGE IN THE DISTINCTION THIS COURT MADE BETWEEN TESTIMONIAL AND NON-TESTIMONIAL MATTERS TWO YEARS LATER, IN ITS DECISION IN DAVIS V. WASHINGTON, 547 US 813 (2006), FAILING TO NOTE THAT:

> "IN ANY EVENT, WE DO NOT THINK IT CONCEIVABLE THAT THE PROTECTIONS OF THE CONFRONTATION CLAUSE CAN READILY BE EVADED BY HAVING A NOTE-TAKING POLICEMAN *RECITE* THE UNSWORN HEARSAY TESTIMONY OF THE DECLARANT." *Id.* AT 826. (EMPH. IN ORIGINAL).

3) THIS IS WITHOUT MENTION OF THE RIGHT UNDER 18 USC § 2518(7)(b), WHERE NO ORDER HAD BEEN SECURED TO CONDUCT INTERCEPTION OF ELECTRONIC COMMUNICATION, NOR WITHIN 48 HOURS THEREAFTER, AND REMAIN SUBJECT TO THE SANCTION RECENTLY MADE AWARE UNDER §2518(10)(a)(i), AND MADE INADMISSIBLE.

THAT EITHER TRIAL OR APPELLATE COURT ATTEMPTED TO PARSE THE OBJECTION TO THE INTRODUCTION OF A TAPED CONVERSATION WITHOUT THE MEANS TO TEST THE VERACITY OF THE TOPICS PRESENTED BY IT EITHER (1) CALLS TO QUESTION THE COMPETENCE OF DEFENSE COUNSEL IN THE MANNER IN WHICH HE FRAMED HIS OBJECTION, AS WELL AS HOW THE COURT CHOSE TO INTERPRET IT; OR (2) THAT SOME POTENTIALLY ABSENT ASPECT WAS SO MINIMAL THAT ITS LACK MIGHT ALLOW AVAILABLE, BUT FOR CONDONED SLOTH, REMAINED AT LARGE FISHING IN PUGET SOUND, WHERE A SINGLE PHONE CALL TO A RELATED TRIBE WOULD HAVE HAD MR. JOHN IN ARIZONA IN THE BLINK OF AN EAGLE'S EYE.

NO SUCH ATTEMPT TO SECURE THE PRESENCE OF MR. JOHN TO TESTIFY, A REQUIREMENT SUCCINCTLY TWEAKED IN CRAWFORD, WAS MADE BY THE STATE, BUT PRESAGED BY A COMMENT BEYOND OURS OF MULLING:

> "DISPENSING WITH CONFRONTATION BECAUSE TESTIMONY IS OBVIOUSLY RELIABLE IS AKIN TO DISPENSING WITH JURY TRIAL BECAUSE A DEFENDANT IS OBVIOUSLY GUILTY. THIS IS NOT WHAT THE SIXTH AMENDMENT PRESCRIBES." Id. AT 62.

IT INSTEAD MADE THE ARGUMENT THAT THE JOHN TAPES WERE "NON-TESTIMONIAL", BUT IN DOING SO, OVERLOOKED THE ESSENTIAL DISTINGUISHING CHARACTERISTIC DESCRIBED IN DAVIS:

> "STATEMENTS ARE NONTESTIMONIAL WHEN MADE IN THE COURSE OF POLICE INTERROGATION UNDER CIRCUMSTANCES OBJECTIVELY INDICATING THAT THE PRIMARY PURPOSE OF THE INTERROGATION IS TO ENABLE POLICE ASSISTANCE TO MEET AN ONGOING EMERGENCY. THEY ARE TESTIMONIAL WHEN THE CIRCUMSTANCES OBJECTIVELY INDICATE THAT THERE IS NO SUCH ONGOING EMERGENCY, AND THAT THE PRIMARY PURPOSE OF THE INTERROGATION IS TO ESTABLISH OR PROVE PAST EVENTS POTENTIALLY RELEVANT TO LATER CRIMINAL PROSECUTION." Id. AT 822.

CLEARLY, THOSE TAPES, CREATED OVER AT LEAST 3 DAYS AND 5 PHONE CALLS TO ARRANGE A STING, UNDER THE PROMPTING OF FEDERAL AGENTS ARE NOT FRAUGHT WITH EXIGENCY, BUT WITH A VIEW TOWARD LATER PROSECUTION. OBVIOUSLY, THEY ARE TESTIMONIAL IN NATURE, AND DEMAND THE CROSS-EXAMINATION OF THE OFFERING ACCUSER, WHO REMAINED THE ONLY EYE WITNESS TO THE SELLER WHO HANDED HIM HIS PRODUCT AT BOTH THE CASINO AND THE CAR WASH. WHILE MR. JOHN MIGHT HAVE DEVELOPED USEFUL AMNESIA, OR BEEN ABLE TO DESCRIBE COERCED ENTRAPMENT, THE ONE EVENT TO WHICH IT IS CERTAIN HE COULD NOT ATTEST IS THE PETITIONER AS HIS SUPPLIER. TAKEN IN THE CONTEXT THAT: (1) NO DIRECT OBSERVATION WAS MADE, DESPITE THE PHALANX OF FEDERAL AGENTS, OF THE PETITIONER GIVING OR RECEIVING ANYTHING; (2) THAT THE MONEY FOR THE BUY WITHIN THE STING WAS NOT PHOTOCOPIED AS IN USUAL PRACTICE, PREVENTING ITS DISPOSITIVE IDENTIFICATION; AND THAT (3) ONLY ROBERT JOHN HAD TWICE HAD PHYSICAL CONTACT WITH HIS SUPPLIER, AND NOT ANY OF THE AGENTS, MR. JOHN THEN BECOMES THE ONLY PERSON WHO COULD ESTABLISH THE IDENTITY OF THE SELLER.[4] THUS, HIS TESTIMONY IN OPEN COURT, SUBJECT TO THE CONSTITUTIONAL REQUIREMENT FOR AMPLE AND MEANINGFUL CONFRONTATION BECAME MANDATORY, AND WITHIN THE AWESOME POWER OF THE GOVERNMENT TO PROCURE, BUT IT DID NOT.

BUT FOR THE IMPROPERLY ADMITTED TAPES, IT IS MORE PROBABLE THAN NOT THAT A UNANIMOUS VERDICT WOULD HAVE RESULTED, AND POSSIBLY NO VOTE OF GUILTY AT ALL, AS THEIR ABSENCE WOULD HAVE FAILED TO SUPPORT ANY ALLEGATION BEYOND A REASONABLE DOUBT.

TWO REASONABLY DRAWN INFERENCES MAY HAVE INSTEAD BEEN FOUND BY THE TRIER OF FACT: (1) WHY DIDN'T THE PROSECUTION PRESENT THE TESTIMONY OF THEIR STAR WITNESS?[5] AND (2) WHY DIDN'T HE EXPRESS ANY SURPRISE OR RELUCTANCE TO DEALING WITH MR. FELIX AS "MANDO"?[6]

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4) RT, CROSS-EXAMINATION DET. C.D. RADCLIFF, 10/28/14, APPENDIX F, P. A98-A104

6) RT, DIRECT EXAMINATION, SPECIAL AGENT M. HALL, 10/29/14, APPENDIX F, P. 105-107

III. THE DECISION OF THE NINTH CIRCUIT SERVED TO FORECLOSE CONSTITUTIONAL GUARANTEES

JUST AS THIS COURT HAS HELD THAT ERRONEOUS JURY INSTRUCTIONS INACCURATELY DESCRIBING THE REQUIREMENT TO PROVE GUILT BEYOND A REASONABLE DOUBT CREATES A STRUCTURAL ERROR REQUIRING REVERSAL AND PRECLUDING HARMLESS ERROR ANALYSIS IN SULLIVAN V. LOUISIANA, 508 US 275, 281 (1993), AS WE HAVE SHOWN HERE, WITH CRITICAL ASPECTS TAKEN FROM CRAWFORD AND DAVIS THAT CONFRONTATION CLAUSE VIOLATIONS EQUALLY IMPACT THE PROPER FUNCTION OF THE JURY, IT SEEMS THAT DEFINED MEMBERS OF THAT SET OF CONFRONTATION DENIALS IN LIKE MANNER, ALSO GO TO THE INHERENT INTEGRITY OF THE TRIAL PROCESS.

IT SEEMS TO THE PETITIONER THAT IN APPLICATION OF HOLDINGS OF THIS COURT RELATIVE TO CONFRONTATION CLAUSE ISSUES IN ACTUAL PRACTICE AMONG THE CIRCUITS HAVE PRODUCED A CONSIDERABLE, AND NOT ALWAYS WITH CONSISTENTLY DRAWN PARAMETERS, RANGE OF VARIANCE.

THOSE THAT HAVE FOUND THE MATTER AS INSTANCES OF MERE TRIAL ERROR, AND REVIEWABLE AS HARMLESS ERROR INCLUDE: US V. TREACY, 639 F.3d 32, 45-46 (2ND CIR 2011); US V. HINTON, 425 F.3d 355, 363 (3RD CIR 2005); US V. PRYOR, 483 F.3d 309, 313 (5TH CIR 2007); US V. HENDERSON, 626 F.3d 326, 334-35 (6TH CIR 2010); US V. WALKER, 673 F.3d 649, 658-59 (7TH CIR 2012); AND US V. NDIAYE, 434 F.3d 1270, 1287-88 (11TH CIR 2006).

THOSE THAT FOUND SUCH ERROR TO NOT BE HARMLESS INCLUDE: US V. WILLIAMS, 632 F.3d 129, 134 (4TH CIR 2011); US V. JACKSON, 656 F.3d 687, 697 (5TH CIR 2011); DORCHY V. JONES, 398 F.3d 783, 791 (6TH CIR 2005); US V. WARD, 598 F.3d 1054, 1060 (8TH CIR 2010); AND US V. STEVER, 603 F.3d 747, 757 (9TH CIR 2010).

IN DISTINGUISHING THESE AUTHORITIES, IT SEEMS THOSE OF THE STRUCTURAL CLASS ARE UNIFIED BY THEIR COMMON VIEW THAT THE CHALLENGED EVIDENCE WAS CHIEF AMONG THE MATTERS ALLEGED AND PRESENTED, AND THAT IT PREJUDICED THE DEFENDANT IN THE EYES OF THE JURY.

THIS COURT HAS HELD THAT THE PROPER STANDARD FOR COLLATERAL REVIEW OF CONSTITUTIONAL TRIAL ERRORS WAS NOT THE REASONABLE DOUBT STANDARD IN CASES ON DIRECT REVIEW IN BRECHT V. ABRAHAMSON, 507 US 619, 637-38 (1993), BUT RATHER IS THAT FOUND IN KOTTEAKOS V. US, 328 US 750, 776 (1946), REQUIRING A SHOWING OF "SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT."

IT IS RESPECTFULLY SUBMITTED THAT WITHIN THE CONTEXT OF WHAT HAS BEEN SHOWN TO BE AN EGREGIOUS AND WILLFUL INTENT TO IGNORE ARGUMENTS TO DEMONSTRATE ACTUAL INNOCENCE, WHETHER IN THE ABSENCE OF JURISDICTION, OR OF READILY DEMONSTRABLE FAILURE TO HAVE PROVEN GUILT BEYOND A REASONABLE DOUBT, THAT THE BRECHT AND KOTTEAKOS PRE-AEDPA STANDARDS NO LONGER CAN REASONABLY PERMIT A REVIEW OF ACTUAL INNOCENCE CLAIMS, AND SHOULD BE REVISITED WITH AN EYE TO HOIST CONFRONTATION CLAUSE VIOLATIONS THAT SUBSTANTIVELY ALTER THE INPUT TO A JURY'S ASSESSMENT OF GUILT, TO STRUCTURAL ERROR STATUS.

## CONCLUSION

FOR THE FOREGOING REASONS, PETITIONER RESPECTFULLY REQUESTS THAT THE PETITION FOR A WRIT OF CERTIORARI BE GRANTED.

RESPECTFULLY SUBMITTED THIS 26TH DAY OF JUNE, 2019.

/S/ ARMANDO D. ISLAS, JR.
PETITIONER PRO SE