

ORIGINAL

No.

IN THE SUPREME COURT OF THE UNITED STATES

19-6024

KENNETH ALLEN ROGERS,

Petitioner,

v.

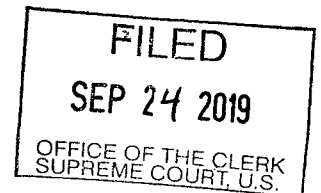
THE STATE OF CALIFORNIA,

Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

KENNETH ROGERS (AC8841)
SQSP 4-W2
SAN QUENTIN, CA 94974
In Pro Se



QUESTIONS PRESENTED FOR REVIEW

The State of California denial of legal representation at a pre-trial motion of the People requiring a hearing that if retained legal counsel did not continue to represent petitioner then retained legal counsel must account for the advance retainer paid of \$128,500.00 so that petitioner could retain new legal counsel of his choice deprived petitioner of a fundamental right.

A criminal defendant had an absolute right to a refund upon retained legal counsel's withdrawing from legal representation as said fiduciary relationship puts into place undivided loyalty superimposes onto the attorney-client relationship, which prevents said conduct.

California violated petitioner's rights to fundamental fairness when the trial court never held a hearing regarding retained legal counsel's acquiring a property interest in petitioner's property, \$128,500.00 retainer which defense counsel asserted was non-refundable and that the client could not contest the withdrawal.

The State of California and its administrative agency the State Bar of California have deprived petitioner of the nature of the attorney-client relationship that requires a unique fiduciary duty toward a criminal defendant, "giving counsel" which is imputed with ultimate trust and confidence to avoiding conflicts of interest, operating competently, safeguarding client property.

The State of California approves of criminal defense counsels stealing of petitioner's property to prevent petitioner from any ability to retain legal counsel of his choice, in violation of petitioner's Sixth Amendment Rights to legal counsel of his choice.

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PASSIM

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THE STATE OF CALIFORNIA,

Respondent.

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RULE 14.1 (b) (iii)
STATEMENT OF RELATED CASES
ROGERS V CALIFORNIA
UNITED STATES SUPREME COURT

Adrian Frank Andrade, v. Matthew Cate, United States District Court, E.D. California Case No. Civ. No. S-09-2270 KJM where the Federal Court granted a FRCP 60 (b) motion vacating a dismissal of a Habeas Corpus Petition, as Petitioner has presented evidence that Masuda and Giffard effectively abandoned him after filing the traverse in this case, Dated September 24, 2013.

In the Matter of: Donald Masuda, State Bar Court Case No. 13-O-16049 stipulation re facts, conclusions of law and disposition and order approving stayed suspension; no actual suspension, where Masuda abandoned a client. Dated November 10, 2014.

Rogers v Swarthout filed on July 8, 2014, in the United States District Court Northern District of California case No. 14 CV 03087 asserting that denial of legal counsel prevents petitioner from being able to order Donald Masuda to refund the unearned retainer upon Masuda withdrawing from representing criminal defendant Rogers of some \$87,000.00. The District Court dismissed the habeas corpus petition asserting that the United States Supreme Court has never ruled on that issue, however, the United States Supreme Court had granted review on that very question on June 8, 2015, and decided that issue favorable to petitioner's argument on March 30, 2016, some 15 days after the Court dismissed petitioner habeas petition.

Masuda ~~was disciplined by~~ California Supreme Court, case No. S223506, filed on December 23, 2014, and confirmed the State Bar Court Disciplinary action taken on March 19, 2015.

Accusation of Rogers vs. Donald Masuda case No. S223809 filed in the California Supreme Court on January 16, 2015 from a denial by the California State Bar to bring disciplinary charges against Donald Masuda and denied Feb. 18, 2015.

In the Matter of Kenny Norman Giffard, State Bar Court Of California
San Francisco Hearing Department - San Francisco Case No.: 12-O-
16522-PEM July 15, 2015.

Kenneth Rogers v. Donald Masuda and Kenny Giffard filed in the
Sacramento County Superior Court Trial Court Case Number: 2014
169669 filed October 2, 2014, cause of action for disgorgement of
advance legal fees for failure to give written disclosure pursuant to Rule
3-310 of conflict of interest. Dismissed by the Superior Court on
05/25/2017

Rogers v. State Bar of California (Masuda) Administrative Writ of
Mandate filed in the California Supreme case No. S250812 against the
State Bar of California for failure to protect the Public from acts of
unethical attorneys for failure to comply with the Rules of Professional
Conduct, filed on August 23, 2018 and denied 10/24/18.

Kenneth Rogers v. Donald Masuda and Kenny Giffard appeal from
dismissal heard in the California Court of Appeal, Third Appellate
District case No. C084919, appeal from dismissal requiring
disgorgement of advance legal fees for failure to give written disclosure
pursuant to Rule 3-310 of conflict of interest, as it is public policy in
California, to protect the public from these very acts. Affirm May 24,
2019

Kenneth Rogers v. Donald Masuda and Kenny Giffard, petition for
Review filed in the California Supreme Court case No. **S256735** based
upon the August 30, 2018 decision in the Sheppard Mullin v. J-M
Manufacturing decision, reported as 6 Cal5th 59, that it is public policy
in California to protect the public from unethical conduct by attorneys
members of the State Bar. Denied August 14, 2019.

Kenneth Allan Rogers, respectfully Petitions for a Writ of Certiorari to review the judgment of the California Supreme Court in this case.

OPINION BELOW

The opinion of the Supreme Court of California is not reported but is attached A1, the opinion of the First Appellate District Division Five is not reported but is attached as A - 7-26 .

JURISDICTION

The final judgment of the Supreme Court of California was entered on May 22, 2019, This Court's jurisdiction rests on 28 U. S. C. § 1257 (a). This Court granted Petition on July 22, 2019, until Oct. 19, 2019 to file this Petition for Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part:

In all criminal prosecutions, the accused shall enjoy the right and to have the Assistance of Counsel for his defenses. **Article III, section 2, clause 1, of the U.S. Constitution extended the federal judicial power to "all Cases, in Law and Equity, arising under this Constitution."**

STATEMENT

This case had as its origin, the total failure of the State Bar of California and the California Supreme Court to enforce the self-regulation of the legal profession of its members to initiate disciplinary proceedings against attorneys who fault the California Rules of Professional Conduct for the attorney's advantage over the client.

In this case, the attorney, members of the State Bar placed the members' interest in a non-refundable advance payment of legal fees, over the client's rights to a refund of the unearned retainer.

These acts of the State Bar of California in refusing to protect the public of these serious violations of the Rules of Professional Conduct, prevented petitioner from his ability to retain legal counsel of choice for a jury trial, in violation of the clearly established United States Supreme Court Law.

Here Deputy District Attorney Stoen made an offer to defendant Rogers for a plea bargain in this case reducing the felony charge of attempted murder, 25 years to life to a misdemeanor, penal code § 32.

The terms of the plea bargain were for a sentence of 120 days in the county jail, based upon the fact that the trial judge ruled that Richard Peacock refused to testify, according to an Email from Deputy District Stoen,

Then on Oct 18, 2007, defense legal counsel Donald Masuda sent Deputy District Attorney Stoen an Email asserting **"I also may have a conflict of should this case proceed to trial."** A-52

The Trial Judge refused to be bound by the Plea Bargain on November 9, 2007, and defendant Rogers was permitted to withdraw his plea, which reinstated the original charges.

Deputy District Attorney Stoen then filed a Motion into the trial Court to call Donald Masuda as a witness at Defendant Rogers trial, with a hearing set for January 28, 2008. A-54-91.

In fact, defense counsel Masuda asserted to the trial court that, **"I can not even represent Mr. Rogers even in these proceedings"**, see A-87 lines 10-11.

Then on December 4, 2007, defendant's legal counsel Donald Masuda demanded that defendant Rogers must pay an additional \$28,500.00 advance retainer because **"the time I spent on the case had exceeded the contractual amount."** See A -53 & A-216 at ¶15 lines 8-9 **"and the time I spent on the case had exceeded the contractual amount."**

Even though the retainer agreement was for a flat fee of \$60,000.00 with no hourly rate, stated, see A -249-50 & compare Masuda's admission that the Retainer was for a flat fee A-209 at ¶ 1-3.

Defense legal counsels Masuda and Giffard also never provided a written disclosure of the conflict of interest if the criminal case proceeded to trial, required by Rule 3-310 see A -52 & A-195.

The trial Court on Jan. 28, 2008, granted defense legal counsel Donald Masuda's oral motion to be relieved, based upon the Motion filed by Deputy District Attorney Stoen's Motion, that the People were going to call defense counsel Donald Masuda as a witness at trial.

The main cause of the errant violations of the Rules of Professional Conduct by attorneys Donald Masuda, Timothy O'Laughlin and Kenny Giffard are the State Bar of California has not consistently fulfilled its mission to protect the public from these very acts, below see California State Auditor Report 2015-030 at A -151-192.¹

Donald Masuda entered into four retainer agreements which required defendant Rogers to advance pay \$128,500.00 for legal representation through trial as a flat fee, A-47-50 & A-53.

Masuda's retainer agreements asserted that advance fees paid were "non-refundable" and if the attorney (Masuda) refused legal representation and the attorney withdrew, the client (Rogers), could not contest the withdraw, see A 50 at ¶ 7, places in serious question Masuda's loyalty to the client.

Attorney Masuda at all times refused to provide an accounting for advance legal fees paid and or a refund of the unearned retainer, in direct violation of Rules 4-100 (B) (3) and 3-700 (D) (2), by asserting that accounting has to be demanded by the client. see A -203-207.

The irony here is that attorney Donald Masuda represented attorney Kenny Giffard in yet another State Bar case against attorney Giffard who failed to refund a retainer of \$55,000.00 and the State Bar Court asserted that **"does not require as a predicate that the**

¹ Proof of this allegation is showing that attorney Donald Masuda Bar license was suspended but stayed for the very conduct that occurred in petitioner case which was confirmed by the California Supreme Court on 3/19/15 in case No. S223506 but was denied in Petitioner's Accusation in case No. S223809 on 2/18.15, both cases were pending simultaneously for 33 days for the very same conduct of attorney Donald Masuda. See A-131& A132-149 and denial A151.

client demand such an accounting” see In the Matter of Kenny Giffard 12-O-16522, A 231-245.

The State Bar's Court decision was dated July 15, 2014, and Masuda's responses to the discovery was dated December 2014, well after Masuda was informed of the Rule 4-100 (B) (3) violations.

Supervising Deputy District Attorney Newman, on April 25, 2008, made a court appearance in this criminal case and moved the Trial Court for reconsideration of the order relieving Donald Masuda.

The motion was based on two grounds, (1) that Donald Masuda could not be called as a witness at defendant Rogers's trial. The second ground, was if Masuda did not continue to represent defendant Rogers, then Masuda had to account for the advance legal fees already paid by defendant Rogers, here some \$128,500.00. A -98 lines 5-8 and lines 12-16.

The trial court granted the "People's" request and set a hearing for May 9, 2008, but because the trial court never appointed an attorney to represent defendant Rogers, no hearing was held because defendant Rogers was not represented by **"He is now without counsel."** A-106 line 1.

Stoen's intentions were to interfere with defendant Rogers rights to legal representation by legal counsel defendant's choice and that by blocking a determination of a hearing would also prevent defendant Rogers from obtaining a refund of the advanced retainer paid, which defense counsel asserted was non-refundable \$128,500.00.

Moreover, legal representation at April 25, and May 9, 2008 hearing by attorney O' Laughlin was not representation by an

independent counsel, as O' Laughlin's allegiance was to Donald Masuda as Masuda paid attorney O' Laughlin, A-51.

The trial court then proceeded to appoint attorney O' Laughlin even though O' Laughlin had been paid \$10,000.00, by Masuda to represent Masuda's interest in the Rogers' case even though O' Laughlin was not paid by Masuda, see A -106-107.

The trial court never addressed the facts that attorney O' Laughlin had been paid by Donald Masuda, creating a conflict of interest, which deprived defendant Rogers' of rights to independent legal counsel in a criminal case.

Defendant Rogers was denied legal representation in criminal case from January 28, 2008 until December 15, 2008, until the Court finally appointed independent legal counsel, J David Markham.

Stoen's inconsistent acts were contrary to the "People's positions" that a hearing was required to insure legal representation by retained legal counsel of defendant Rogers' choice, a right guaranteed.

The People asserted that if Masuda was not going to represent Mr. Rogers then Donald Masuda would have to account for the advance payment of legal fees of \$128,500.00, so defendant Rogers could retain new legal counsel of his choice, A-98 lines 12-16.²

² In Petitioner filed a civil suit against attorney Masuda was brought because California State Bar refused to require Masuda and Giffard to refund the unearned retainer and the Court of Appeal upon withdrawing from representation but held that the attorneys can conceal the conflict of interest and it does not toll the statute of limitations.

As the trial court had already ruled that a hearing was necessary to address the People's concerns, that Mr. Masuda would have to account for funds advanced, so that "Mr. Rogers is going to need for any subsequent representation."

The People, on April 25, 2008, even recognized that defendant Rogers had a federal guaranteed right to legal representation by legal counsel of a defendant's choice. The People asserted that Masuda had to appear in court and account for the advance legal fees charged so that defendant Rogers could retain new legal counsel of his choice, see A-98 lines 12-16.

The trial court agreed and set a hearing for May 9, 2008, but never appointed legal counsel for defendant Rogers, to enforce his rights to a refund of the unearned retainer.

Deputy District Attorney Stoen, continued in his untoward ways to interfere with petitioner's rights to retain legal counsel when Stoen filed a "Request For order Granting Transactional Immunity To Donald Masuda For Testimony Pertaining To Any Offense Related to Intimidation of Richard Peacock", see A -220-221.

It should be noted, that Deputy District Attorney never supported the Request "Transactional Immunity for Masuda" with any evidence supporting the declaration by Richard Peacock, because Richard Peacock to testify to those facts and admitted to in Stoen's to Masuda Email at A -227.

It is also interesting to note that an Email communication to attorney Masuda of 10/19/07, where Stoen wanted a trial date of January

2008, with no mention of any motion to call Masuda as a witness. See A-226.

Nor did Deputy District Stoen ever include Masuda as a witness or for that matter Richard Peacock, see A-222-225.

Petitioner went to a jury trial with representation by court appointed legal counsel, against defendant's rights to obtain a refund of the unearned retainer in order to obtain legal counsel of defendant's choice, in violation of U.S. v. Gonzalez-Lopez decision.

After conviction, attorney Giffard then substituted in to represent petitioner in August 2009, on a motion for new trial, when in reality Giffard had to inform both the Court and petitioner pursuant to Rule 3-310 (A) (1) (2) (B) (1) (2) (a) of Giffard's ongoing professional legal business representing clients for the Law Office of Donald Masuda. See A -193-194.

In fact, attorney Giffard, in opposition to a motion for summary judgment in a civil suit, submitted a declaration that **"At no time since I was licensed as an attorney have I worked for or been a partner or principal in the Law Office of Donald Masuda", see A -216 at ¶ 3, which is actually contrary to the Stipulation which Masuda entered into, see A-123 at ¶ 3.**

The facts here are that both Donald Masuda and Kenny Giffard were the very subject matter of a State Bar Court complaint which alleged that these attorneys abandoned a client for the advance legal fees paid. See A-114 -117.

Attorney Masuda retained attorney Larry Pilgrim to represent in the State Bar Court case and entered into a stipulation of facts "[O]n

August 19, 2009, Respondent through attorney, Kenneth Giffard (“Giffard”) filed a petition for writ of habeas corpus on behalf of Andrade, Andrade v Cate, United States District Court for the Eastern District of California, case No. S-09-2270 KJM TJB.”

Attorney Giffard substituted into the criminal case to represent defendant Rogers in August 2009, and was done to conceal the facts from being presented of Masuda’s failure to refund the advance fee, paid of \$128,500.00. A -193-194, and see A-218 at ¶ 9.

Giffard at all times concealed his conflict of interest with Attorney Masuda according to Rule 3-310 ((a) (1) (2) (3) (1) (20) (3) required disclosures to not only petitioner but to the trial court, who has the final say regarding legal representation in a criminal case.³

Petitioner raised the issue of “structural error” on his direct appeal of right and the Court of Appeal held **“He claims the order relieving Masuda was structural error requiring reversal without a showing of prejudice. We disagree.”** See A-19.

However, the Court of Appeal cites no authorities for their position, just simply disagreeing that a criminal defendant can be denied legal representation at a critical stage of the proceeding, i.e. the right to have legal defense counsel refund the advance fees paid, here of some \$128,500.00.

The question presented here is, once the “People” made their motion on April 25, 2008, which the trial court granted, required that

³ The California Supreme Court decision in Sheppard Mullin v J-M Manufacturing 6Cal 5th 59 (2018) held that attorney who concealed the conflict of interest must refund the entire retainer if it was done in bad faith however, the California Court affirmed the dismissal holding that the concealment did not toll the statute of limitation and the California Supreme Court denied review.

Masuda be present and account for the advance retainer paid in this case by defendant for future legal service of \$128,500.00, which was required by Rule 3-700 (D) (2).

The issues in this case show a blatant disregard by the State of California to a criminal defendant's "fundamental rights defendant's Sixth Amendment right to the Assistance of Counsel" which by now it should be axiomatic.

Clearly, here there is no rationalization to deny a criminal defendant of his federally guaranteed right to legal representation at a pretrial hearing in a criminal case so that defendant can obtain the return of his property, the \$128,500.00 in order to retain legal counsel of his choice.

Here the conduct of criminal defense counsel Donald Masuda, was a blatant breach of Masuda's fiduciary duty toward the client Rogers as Masuda sold out that fiduciary duty, all done to prejudice the client's rights to legal representation of his choice.

Respondent, State of California's misconduct is so egregious and the resulting prejudice to petitioner, who was a criminal defendant, rises to a constitutional level of such proportion never seen, as it denied petitioner's ability to retain legal counsel of his choice. See Luis v United States 578 U.S. ____ (2016).

The direct appeal was decided even though the record on appeal showed that on April 25, 2008, the Supervising Deputy District Attorney Newman, appearing the criminal case, moved the trial court to

reconsider the order of January 28, 2008, because the People could not call Donald Masuda as a witness.

Defense legal counsel Donald Masuda's retainer agreement had, as provision that the client must waive his rights not only to the loyalty of the attorney Masuda, but that if Masuda decides not to represent the client, then all advance retainers paid were non-refundable, at paragraph 7, of the May 23, 2006, retainer agreement see A-49-50.

Additionally, that provision of the retainer agreement also held that the client could not contest the withdrawal of attorney Masuda, before a court, see A 50 at ¶ 7.

These provisions of the Masuda's retainer agreement, violate the Rules of Professional Conduct and statutory provisions of the State Bar Act, which are public policy to protect the public from these very acts of members of the State Bar of California.

The problem here is the "State Bar of California does not consistently fulfill its mission to protect the public from errant attorneys" such as Masuda and Giffard. See California State Auditor Report Number 2015-030. A 151-192 and compare state bar court cases A118-130. And A-231-245.

The California Supreme Court denied reviewed as such approve of this conduct.

Petitioner then sought relief in United States District Court Northern District of California, ruled "[T]here is no 'clearly' established law federal law, as determined by the Supreme Court of the United States", which is a necessary predicate to relief in any habeas case (such

as this one) governed by the AEDPA see 28 U. S. C. § 2254 (d) (1). See A-37.

The irony here is the District Court never addressed that this Court on June 8, 2015, had already granted review of this very question presented in *Luis v United States*, that a criminal defendant had an absolute right to a refund of his property to retain legal counsel of his choice.

In fact, the District Court denied petitioner's Writ on March 15, 2016, and on March 30, 2016, this Court ruled in *Luis v United States* 578 U.S. ___, (2016) that the 2006, decision in *Gonzales-Lopez* decision was the controlling law.

The District Court denied a certificate of appealability and the Ninth Circuit also denied appealability.

Defendant Rogers then petitioned the Court of Appeal to Recall the Remittur and Reinstate the Appeal addressing these specific issues.

The Court of Appeal First Appellate District denied the petition and Petitioner sought review in the California Supreme Court, who also summarily denied review on May 22, 2019.

Furthermore, as a direct result of discovery obtained in a civil suit against Masuda and Giffard, petitioner obtained a copy of an Email communication in which Masuda had sent an Email on Oct 18, 2007, announcing that Masuda had a conflict if the case proceeds to trial, see A-52

Moreover, the Rules of Professional Conduct are public policy in California to protect the public from these very acts of Donald Masuda and Kenny Giffard.

Petitioner has languished in State Prison for some 10 plus years from a conviction where the State Bar of California permits retained legal counsel to literally steal petitioner's property, some \$128,500.00, so petitioner could not retain legal counsel of his choice.

The questions presented here in these undisputed facts in this petition for Writ of Certiorari are the very same as addressed in **Luis v United States** 578 U.S. __ (2016) where this Court stated:

“[G]overnment would undermine the value of that right by taking from Luis the ability to use the funds she needs to pay for her chosen attorney.”

This failure to hold a hearing with legal representation on behalf of defendant Rogers violated the “fundamental rights to counsel”.

This denial of the said right deprived petitioner of a hearing on the merits for the release of petitioner's funds, which were his property as the retainer agreement were for a flat fee for legal representation through trial and under State Law the attorney had to provide an accounting and refund the unearned retainer.

This denial of legal representation at both the April 25, 2008, and May 9, 2008, trial court hearings was “structural error” as defined by this Court that so “effects the framework within which the trial proceeds” citing **United States Gonzales-Lopez**, 548 U.S. 140, 148 (2006).

Petitioner raised this issue on a direct appeal of right asserted “structural error” and the Court of Appeal stated “We Disagree” see A 19

The Court of Appeal cites no authority for said determination because there are none.

The government acts here of failure to protect the public from these acts of legal defense counsel, breaches of their fiduciary duty of attorneys Masuda, O’ Laughlin and Giffard, which was the very subject of the State of California’s Auditor’s report 2015 -030 “placed the public at risk” see A-153.

In further proof of this fact Petitioner filed a complaint against Donald Masuda and Kenny Giffard and the State Bar refused to bring any disciplinary action, even though there was a pending disciplinary action against both attorneys for the very same conduct, see A 114-117, A 118-130.

The California Attorney General’s Office likewise asserts that petitioner has no right to legal representation in pre-trial motion in a criminal case in which the criminal defendant’s right to obtain his property that was advanced as legal fees for legal representation “through trial” in the amount of \$128,500.00, see A-39.

This assertion by the chief law enforcement officer of California is beyond absurd and is basically ludicrous.

In fact, the State Bar Office of Chief Trial Counsel asserted that State Bar will only bring disciplinary action against attorney Donald Masuda if the California Supreme Court orders the State Bar to do so, see A 113.

Moreover, when the State Bar denied the complaint against Donald Masuda, petitioner filed an accusation under Business and Professional Code § 6084 (a) into the California Supreme Court. See A132-149.

The Accusation was filed in the California Supreme Court entitled Rogers v Masuda case No.S223809 on Jan. 16, 2015.

On December 23, 2014, the State Bar Court filed a case against Donald Masuda because California Supreme Court must confirm a disposition in which the attorney is suspended from the practice of law. See A-131 case No. No. S223506.

These were the very same grounds that petitioner alleged in his accusation against Donald Masuda. See A-132-149.

Both cases were pending simultaneously for 33 days over the very facts pattern by the very same attorneys' collection of an advance fee for legal work and never performed. See A-131 and compare A-150.

The California Supreme Court confirmed the imposition of suspension by the State Bar Court on March 19, 2015, but denied petitioner's accusation against the very same attorney.

It is inconceivable for an attorney who has collected \$128,500.00 from a criminal defendant to just walk away with the client's money and never provide an accounting or to refund the unearned retainer.

Petitioner does not know of a more compelling principle of law when a Court refuses to consider the law for one litigant on the very

same grounds but would not do so for another litigant, especially when the very same defendant violated the Rules of Professional Conduct.

This principle of equality has at its basis in the 14th Amendment in the Equal Protection of the Law, which obviously does not exist in California Courts.

The question presented herein by these undisputed facts are that the State of California prevents a criminal defendant from having a pre-trial hearing with legal representation in a criminal case so attorney Donald Masuda can literally steal a client's property and prevent the defendant from any ability to retain legal counsel of his choice.

Here petitioner at all times had a legal right to a refund of the unearned retainer from defense legal counsel under California Rules of Professional Conduct rule 3-700 (D) (2), and the denial of legal representation from January 28, 2008, through December 15, 2008, in a criminal case deprived petitioner of those rights.

This violated petitioner's federal constitutional rights to retain legal counsel of choice, as such the conviction is pre se reversible.

More importantly, the failure of the State Bar of California to protect the public from these repeated acts of unethical conduct shows a pattern that the must be corrected, as both the State Bar of California and the California Supreme Court refuses on a routine basis to prosecute members of the state bar.

The California Supreme Court has never issued an Accusations complaints against members of the State Bar, which actually protected the attorneys from prosecution by denying all accusations.

REASONS FOR GRANTING THE PETITION

I

THE DENIAL OF LEGAL REPRESENTATION AT PRE-TRIAL PROCEEDINGS DEPRIVED THE CRIMINAL DEFENDANT OF HIS RIGHTS TO THE A PROMPT REFUND OF THE UNEARNED RETAINER FROM THE ADVANCED RETAINERS PAID TO ATTORNEY DONALD MASUDA OF \$128,500.00, WHICH WAS AN UNCONSCIONABLE FEE FOR THE SERVICE PERFORMED UPON WITHDRAWING ON JANUARY 28, 2008, WHICH DENIED PETITIONER HIS RIGHTS TO LEGAL COUNSEL OF HIS CHOICE.

The legal issues posed herein are, can California Courts permit legal defense counsel, (Donald Masuda), to acquire a secured interest in the property of a criminal defendant when the retainer agreement asserts as follows:

“THE CLIENT FURTHER AGREES that in the event the attorney refuses representation, or the client wishes to terminate the services of the attorneys, all fees paid to date are non-refundable. In the event the attorney wishes to withdraw as attorney of record, the client agrees to consent to such withdrawal. See A 50 at ¶ 7.

These provisions in Donald Masuda's retainer agreement gave Donald Masuda full control over petitioner's property, here a total of \$128,500.00 and deprived petitioner of the unique fiduciary reliance, stemming from people hiring attorneys to exercise professional judgment on a client's behalf—"giving counsel" which is imputed to the ultimate trust and confidence in defense legal counsel.

Sir Francis Bacon observed, "[t]he greatest trust between [people] is the trust of giving counsel" (Bacon, Of Counsel, in **The Essays of Francis Bacon**, at 181 (1846)).

This places the duty to deal fairly, honestly with undivided loyalty superimposes onto the attorney-client relationship a set of special and unique duties, including maintaining confidentiality, avoiding conflicts of interest, operating competently, safeguarding client property and honoring the clients' interests over the lawyer's under California Rules of Professional Conduct in serious breach of a criminal defense counsel obligations.

The California Court system, as well as the State Bar of California does not recognize these axiomatic principles that an attorney-client relationship is recognized as so special and so sensitive in our society, its effectiveness, actually and perceptually.

The California Courts has impaired by conduct which undermines the confidence in retained legal counsel Masuda by asserting in petitioner's case that the defense legal counsel can keep all of the advance fees paid to Donald Masuda are the property of Masuda upon withdrawing, See Argument III Infra.

Here California Court of Appeal and the California Supreme Court holds that a criminal defendant has no right to legal representation at a pre-trial motion made by the People, to require legal defendant's counsel Donald Masuda to either continue to represent the defendant Kenneth Rogers or to account for the advanced retainer paid for legal representation through trial. See A 98 Lines 1 -16

Petitioner raised this issue on direct appeal of right, that the denial of legal counsel was in fact “structural error” citing **United States vs. Gonzales -Lopez** 548 U.S. 140, 148, (2006).

The State Court of Appeal simply stated “We Disagree” A- 19.

This Court’s opinion in **Luis v United States** 578 U.S. ___, (2016) states at length that criminal defendant has a “**fundamental right to legal representation by legal counsel at pre-trial hearings where the wrongful deprivation of the right to legal counsel a ‘structural’ error that so affec[ts] the framework within which trial court proceeds**”. This Court cited **United States v Gonzales-Lopez**, 548 U.S. 140, 148 (2006).

Here the State of California in pre-trial restraints on a criminal defendant’s legitimate rights to a hearing was denied legal representation, which prevents petitioner from getting a refund of an advanced retainer paid totaling \$128,500.00 for future legal services, which was never been performed.

This court in **Luis v United States** 587 U S ___, (2016) held that

“The question presented is “[w]hether the pretrial restraint of a criminal defendant’s legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Fifth and Sixth Amendments.” Pet. for Cert. ii. We see no reasonable way to interpret the relevant statutes to avoid answering this constitutional question.”

However, here petitioner was denied legal representation on the People’s motions where the trial court stated, “**I’ve Mr. Rogers here,**

he is technically without counsel,” A 94 at lines 20-21. Once again on May 9, 2008, the trial court stated “He is now without counsel.” A-106 line1.

California court asserts that a criminal defendant has no “fundamental right to legal representation” at a hearing requested by the People so that criminal defendants can obtain his property from the previous retained attorney, Donald Masuda to retain legal counsel of his choice. A 98 lines 12-16.

The right to legal representation in a criminal case, even at the pre-trial stage is not some quixotic right but is actually the rudimentary element of due process of law i.e. the right to be heard by the guiding hand of legal counsel for his defense of his rights. This has been the principles of Due Process since this Court’s decision in **Powell v. Alabama 287 U.S. 45 (1932)**.

These pre-trial proceedings conducted in the trial court opens a yawning breach in the petitioner Rogers’ rights to have a hearing to address a criminal defendant’s rights to a refund of his property, the advance legal fees paid to Donald Masuda so that defendant Rogers could retain legal counsel of his choice.

Clearly, this denial of legal counsel so that petitioner can have legal representation to present the facts that attorney Donald Masuda had to refund the unearned retainer, under Rules of Professional Conduct as absolute and this failure was in fact “Structural Error.”

In fact, the last retainer agreement demanded an additional \$28,500.00 for legal representation through trial, even through the prior

retainer required payment of \$60,000.00 for legal representation through trial. and the only reason that Masuda asserted for demanded an additional \$28,500.00 was that **“the time I spent on the case exceeded the contractual amount.”** See A 49-50, A-53, A-217-219

This Court in affirming the **United States v Gonzales-Lopez** 548 U.S. 140 (2006) held that when the district court judge denied attorney Low legal representation as pro hac vice by the federal court reversed the conviction as it denied a criminal defendant legal counsel of his choice.

Here there is no difference in fact, here the situation is actually worse as the petitioner was denied legal representation of counsel.

It is and should be axiomatic that a criminal defendant is entitled to legal representation at a hearing brought by the People so a criminal defendant can receive his property back from the criminal defense legal counsel so the defendant can retain new legal counsel of his choice.

Here the prejudice must be presumed, when at all times petitioner asserted that he had a right to a refund of the \$128,500.00 retainer paid and that failure to provide a refund deprived a criminal defendant of his absolute right to legal counsel of his choice under the **Gonzales-Lopez** decision.

The trial court ordered a hearing and required that Masuda must appear on May 9, 2008. See A-103

However, Stoen did not want to be bound by the “People’s” position to the trial court and simply refused to proceed with any hearing.

The principle reason that no hearing took place was because the attorney making a special appearance, (O' Laughlin), had his retainer paid by Donald Masuda, hardly an independent legal counsel in any sense of the term. See A-51.

Here the State of California took away petitioner's rights to the ability to retain legal counsel of his choice when the State of California never appointed legal counsel to represent defendant Rogers on the People's" motion to hold a hearing.

This actually, deprived defendant Rogers of his rights to put before the trial court the serious violations of the Rules of Professional Conduct, of which are public policy to protect the public from these very acts of members of the State Bar of California see **Altschul v. Sayble** 83 Cal App 3rd 152 (1978).

The law in California is clear, that upon withdrawing from legal representations an attorney must provide an accounting and a refund of the unearned retainer, which Masuda never did, see **Matthew v. State Bar** (1989) 49 Cal.3d 784, 791.

This failure to appoint legal counsel for this purpose was in fact "structural error" contrary to the Court of Appeal Opinion holding otherwise, because it denied petitioner's right to return of his property, some \$128,500.00 that Masuda was holding as advance payment for legal representation.

This Court in **Luis v. United States** applied the principles that a criminal defendant's untainted funds could be used to retain legal counsel of her choice.

Here in defendant Rogers' case those funds were the actual property of defendant Rogers and were being held by attorney Masuda to be used to prepare for trial as stated in the retainer agreement.

This Court in **Luis v United States , supra** held

“For the reasons stated, we conclude that the defendant in this case has a Sixth Amendment right to use her own “innocent” property to pay a reasonable fee for the assistance of counsel. On the assumptions made here, the District Court’s order prevents Luis from exercising that right. We consequently vacate the judgment of the Court of Appeals and remand the case for further proceedings. It is so ordered.”

Here the State of California has deprived and continues to deprive a criminal defendant of his rights to a refund of his property some \$128,500.00, which has prevented defendant from being able to retain legal counsel of his choice in any of these proceedings.

This also prevented petitioner any ability to obtain legal counsel to present these issues via a writ of habeas corpus in both State Court and Federal District Court Habeas Corpus petitions where the Attorney General of California asserts that there was no decision of this Court holding that denial of legal counsel at such a hearing required legal representation. A 28-46.

Petitioner Rogers, in his Federal Habeas asserted that as a criminal defendant petitioner had a right to a hearing for a refund of his property of some of the \$87,500.00 retainer advances for legal representation through trial as a flat fee A-36.

The relevant facts here are these funds belong to defendant Rogers and had to be released as those funds were never earned by Masuda, see **Matthew v. State Bar** 49 Cal 3rd 787 (1989) holding:

“We have considered abandonment of clients and retention of unearned fees as serious misconduct warranting periods of actual suspension, and in cases of habitual misconduct, disbarment.”

The interesting facts here are that the District Court order denying the federal habeas petition dated March 15, 2016, holding that no United States Supreme Court opinion asserted that criminal defendant has a right to legal representation at hearing to obtain a release of the criminal defendant’s property to retain legal counsel of his choice. See A 39.

However, this Court granted review on this very question on June 8, 2015, in **Luis vs. United States** case No. 14-419.

“Whether the pretrial restraint of a criminal defendant's legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Fifth and Sixth Amendments”.

More importantly, this Court reversed that the United States Court of Appeals for the Eleventh Circuit on this very point in **Luis v United States** 578 U.S. ___, (2016) on March 30, 2016, some 15 days after the District Court denied petitioner’s Federal Habeas petition on this very subject matter.

“We nonetheless emphasize that the constitutional right at issue here is fundamental: “[T]he Sixth

Amendment guarantees a defendant the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire.” *Ibid.*

Here petitioner, a criminal defendant in the trial court, had a federal constitutional right to legal representation at a hearing on the “People’s Motion” for defense legal counsel Masuda to account to both the Court and the defendant for the advance payment of legal fees of some \$128,500.00 for legal representation through trial.

This continuing denial by the State of California of preventing a criminal defendant from his property prejudiced any and all relief as the question was granted review on June 1, 2015, as a representation by an attorney would have the ability to plead the Luis case to refute the District Court’s denial of habeas, *supra*.

Both the State Bar and the California Supreme Court were well aware of this conduct of both Donald Masuda and Kenny Giffard when petitioner’s Accusation alleged the very same conduct in the Andrade case by both Masuda and Giffard. See A 114-117, A118-130, A231-245.

Here petitioner has no avenue for filing of a successive federal habeas, as the District Court denied the habeas, even though the issue had been granted review by this Court on June 8, 2015, and some 15 days after the district court denied the habeas this Court issued its opinion in **Luis v United States**, *Supra*.

Petitioner, in the Federal Habeas Proceedings was not represented by legal counsel, do solely to the State of California’s failures to enforce the Rules of Professional Conduct, refund the petitioner’s property i.e. the retainer paid to attorney Donald Masuda.

Petitioner asserts that these proceedings herein are proceedings in equity seeking to declare the conviction here was obtained in violation of petitioner's federally protected rights.

Article III, section 2, clause 1, of the U.S. Constitution extended the federal judicial power to "all Cases, in Law and Equity, arising under this Constitution."

The question, how can the State of California take a position in a criminal case where the People make a motion before the trial court that Donald Masuda must either continue to represent a defendant Rogers or account for the advance legal fees paid as it is "Judicial Estoppel" to assert inconsistent positions in law.

The State of California cannot take advantage of their own wrong by continuing in their untoward ways in this case by continuing to deprive petitioner of all petitioner's resources in attempting to defend himself against the State of California.

In fact, the State Bar Court in the Matter of Donald Masuda in case No. 13-O-16049 held that

"By failing to refund unearned fees to Andrade until October 2014, more than four years after his employment terminated, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct" See A 124 at ¶ 16.

Masuda's conduct was even worse here where Masuda concealed this serious conduct and the failure of the State Bar to protect the public was main source of the problem. See A 151 and Argument III *infra*.

II

THE PROSECUTOR STOEN'S DECISION TO INSERT HIMSELF INTO AN ETHICALLY COMPROMISED POSITION BY CONTINUING TO CHALLENGING DEFENSE LEGAL COUNSEL DONALD MASUDA REPRESENTATION OF DEFENDANT ROGERS' IN THE CRIMINAL CASE AS WELL AS PREVENTING THE HEARING ORDERED BY THE TRIAL COURT SO THAT ATTORNEY MASUDA WOULD NOT HAVE TO PROVIDE AN ACCOUNTING OF THE ADVANCE LEGAL FEES PAID OF \$128,500.00 ALL DONE TO PREVENT A CRIMINAL DEFENDANT ANY AND ALL ABILITY TO RETAIN LEGAL COUNSEL OF HIS CHOICE.

As Justice Louis D. Brandeis stated in **Olmstead v. United States**, 277 U.S. 438, 479, (Brandeis, J., dissenting).

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

All prosecutors are bound to appear in the name of Justice and here where the prosecutor overstepped the bounds in a pretrial process in Stoen's motion to force defense legal counsel to withdraw from representing the defendant without providing legal representation on behalf of a criminal defendant.

Stoen's position as a prosecutor has overstepped the bounds early in the pretrial process to deprive the defendant Rogers' of his rights to legal counsel of his choice or the ability to be able to retain legal counsel of his choice.

It is petitioner's contention herein that Stoen was bound by People's motion for reconsideration and the representation by the People that the order relieving Masuda had to be reconsidered and that if Masuda did not continue to represent defendant Rogers, Masuda had to account for the advance retainer of \$128,500.00, paid to Masuda.

Clearly judicial estoppel prevents the People from presenting conflicting legal theory, especially when Stoen never called Masuda as a witness, as which was all contrived to prejudice defendant Rogers' rights to legal representation by legal counsel of a defendant's choice.

These acts of Stoen's overstepping also prevented defendant Rogers from his ability to retain legal counsel of his choice, when Stoen never proceeded to comply the court's request to have attorney Donald Masuda so Masuda could account for the advance retainer paid of \$128,500.00 to both the Court and the Client Rogers before the Court.

This failure to appoint legal counsel for defendant Rogers prevented defendant Rogers from putting these issues before the court and thus deprived petitioner of his rights to a hearing on the People's motion as Stoen refused to comply with the People's request, which the trial court granted.

Stoen's actions went unchecked at the trial court level because defendant Rogers was never represented by legal counsel, which was a critical point of the pretrial proceedings before the trial court.

This manifested because attorney O' Laughlin had been paid by Masuda to represent Masuda's interest in these proceeding and was not representing defendant Rogers' interests. A 51.

These failures of protecting a criminal defendant's right to legal representation at the January 28, April 25, and May 9, 2008, trial court proceedings, so tipped the scales of justice as to defendant Rogers' rights to a trial by an attorney of choice mandated by United States v. Gonzalez -Lopez decision requires the reversal of the conviction. See **United States v Wells** 877 F3rd 1099 (9th Cir 2017).

The State Court of Appeal opinion holding that this is not **"structural error"** and the California Supreme Court decision denying review is encroachment into clearly established United States Supreme Court law and cannot stand.

Stoen's actions here are sham proceeding, in which defendant Rogers was denied the opportunity to argue and present evidence, that Masuda's failure to refund the advance legal fees paid of \$128,500.00 upon withdrawing from representation of defendant Rogers.

Stoen's acts were unchecked by the trial court at this pre-trial critical point, so tipped the scales of justice as to render Rogers' trial fundamentally unfair and violated defendant Rogers' rights to legal counsel of his choice, as guaranteed by the clearly established United States Supreme Court Law **U.S. vs. Gonzales-Lopez** decision.

The undisputed facts of this case establishes that the People made a motion on April 25, 2008, to the trial court that defense legal counsel

Donald Masuda cannot be called as a witness in which the trial court stated in the record.

The Trial court's response was:

"First, the position that you're stating is somewhat inconsistent with the position of Mr. Stoen, the prosecutor handling the case at the time, stated. So I'm not sure what your office's position is on this point." See A 98 lines 17-21.

In fact, the "People" asserted that as follows:

**"Certainly the court could order Mr. Masuda to be here to account to the court and to the client for the funds and for the file that Mr. Rogers is going to need For any subsequent representation, even if Mr. Masuda is not going to remain on the case."
A 97- lines 12-16.**

The trial granted the "People's" motion and held that order relieving Donald Masuda must be reconsidered as the Court's holding were:

"And the motion to reconsider is based on not having all the facts, apparently before the court at the time the decision was made. The only way I can get the facts before the court is through Mr. Stoen and Mr. Masuda." A -102 lines 15-19.

Additionally, Stoen also moved the trial court for an order granting Donald Masuda Transactional Immunity For His Testimony Pertaining To Any Offenses Relating To Intimidation of Richard Peacock, see A 220-221.

Deputy District Attorney Stoen knew at all times that defense legal counsel would withdraw from the case because of the October 18, 2007, Email Stoen received. See A 52.

In fact, Stoen had a duty to inform the Trial Court of the Email but did not do so at the November 9, 2007 sentencing hearing on the plea bargain.

Stoen's decision to insert himself into the important determination of Rogers' rights to a **“fair representation carries with it a reproachable air of stacking the deck, for which we cannot offer tacit acceptance.”** See **United States v Wells** 877 F3d 1099 at 1112 (9th Cir 2017).

Stoen, refused to proceed with the May 9, 2008, hearing set by the trial court even though Stoen knew at all times that Stoen never had any intentions of calling Donald Masuda as a witness as Masuda was never placed on the Stoen's witness list nor called as a witness A 222-225.

Clearly, Stoen was not candid with the trial court and because Stoen did not want Donald Masuda to represent his client Rogers nor did Stoen want defendant Rogers to have an ability to retain legal of defendant Rogers' choice.

Nor did Stoen want the client Rogers to have any ability to obtain a refund from Masuda who had possession of the clients advance fee of \$128,500.00, as there is no such thing as a non-refundable retainer.

III

THE STATE OF CALIFORNIA AND ITS ADMINISTRATIVE AGENCY THE STATE BAR OF CALIFORNIA FAILURE TO REGULATE THE FIDUCIARY DUTY OF CRIMINAL DEFENSE COUNSEL OPENS A YAWNING BREACH IN THE UNIQUE FIDUCIARY DUTY OF UNDIVIDED LOYALTY SUPERIMPOSES ONTO THE ATTORNEY-CLIENT RELATIONSHIP

The report of the State of California Auditor's Report of 2015 -030 states the problem that the State Bar's failures to enforce the rules of professional conduct placed the public at risk, see A-153.

Petitioner has shown the ___ actual State Bar Court Disciplinary action taken against both of these attorneys by the State Bar Court for the very same conduct that has occurred in petitioner's criminal case by these very same attorneys see A 118-130 and A A 231-245. See Rule 14.1 (b) (iii) submission.

The State Bar of California asserted in denial of defendant Rogers complaints against Donald Masuda and Kenny Giffard that the State Bar will not bring disciplinary action but will do so if the California Supreme Court orders it to do so, see A -113.

In this case, the California Supreme Court denied petitioner's Accusation against Donald Masuda on Feb. 18, 2015, but confirmed the disciplinary against Masuda, see A 131 & A order denying Petitioner Accusation A 150.

This paints a very bleak picture as the track record of the State of California in protecting criminal defense defendants here permits Donald Masuda to assert that all advance legal fees paid were non-

refundable and that the client had to waive his rights to contest the Masuda withdraw, see A 50 at ¶ 7.

These total failures by the State of California which permits criminal defense legal counsel to violate an **“attorney duty to deal fairly, honestly and with undivided loyalty superimposes onto the attorney-client relationship a set of special and unique duties, including maintaining confidentiality, avoiding conflicts of interest, operating competently, safeguarding client property and honoring the clients' interests over the lawyer's”**. See **In the Matter of Cooperman**, 83 NY 2d 465 (1994).

Moreover the California Supreme Court has ruled “public policy prohibiting” this very conduct by members of the State Bar, as a retainer agreement is unenforceable see **Sheppard Mullin v J-M Manufacturing** 5 Cal 5th 59 at 74 (2018).

However, in a criminal case those principles are nothing more than **rhetoric** consisting of essentially of **hollow** promises of words uttered without any attempt to take the action necessary to back them up by the California Court system or the State Bar.

The State of California and the State Bar allows its attorney members to conceal the fraudulent conduct of legal defense counsel of both Masuda and Giffard. ⁴

In fact, here attorney Larry Pilgrim was attorney of record in the

⁴ In August 30, 2018, the California Supreme Court opinion in **Sheppard Mullin v. J-M Manufacturing** 6 Cal 5th 59, holding that failure to provide written disclosures of the conflict of interest required disgorgement of advance fees paid under Rule 3-310 California Rules. However, the California Supreme Court holds that the duty of criminal defense counsel is conceal the conflict.

State Bar Court representing attorney Donald Masuda in the State Bar Court see A 118-130.

Attorney Pilgrim while representing Donald Masuda in the State Bar Court entered into a stipulated judgment with the State Bar Court that attorney Giffard represented client Andrade starting in August of 2009, on behalf of the Law Offices of Donald Masuda, see A 123 at ¶3.

Irrespective of said personal knowledge of those facts, attorney Pilgrim then filed a declaration on behalf of attorney Giffard asserting that attorney Giffard never represented clients on behalf of the Law Officers of Donald Masuda, see A 218 at ¶ 3.

This Court in **Nix vs. Whiteside** 475 U.S. 157 (1986), **held that an attorney cannot be permitted to subornation of perjury, but the current state of the allowable practices are permitted by the State Bar of California. See A 131 at ¶ 3 & compare A 218 at ¶ 3.**

The California Supreme Court confirmed that attorney Masuda **“failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A) (2) of the Rules of Professional Conduct,”**⁴¹ see A124 at ¶ 15.

Additionally, the California Supreme Court confirmed that Masuda “failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.” See A 124 ¶ 16.

These acts confirm the California’s Auditor Report that the State Bar placed the public in serious jeopardy for failure to enforce the Rules

of Professional Conduct by permitting both Masuda and Giffard's conduct.

The proceedings in the Andrade matter were proceeding post judgment in a criminal case.

In petitioner's case they were pre-trial proceedings in which the State of California has permitted attorney Donald Masuda to literally steal the clients property some \$128,500.00 and preventing a criminal defendant his federal guaranteed constitutional right to legal representation of his choice.

This was and is state action which has deprived petitioner of federally protect rights to legal counsel of his choice when California permitted Donald Masuda to steal the client's money and failed to protect the client's rights to a hearing.

California has violated petitioner's rights to Due Process of Law as even the People sought such a hearing and the State refused to hold a hearing and knowingly permits this conduct is outrageous. See A 92-103.

This is Petitioner's only remedy as the Federal District Court denied a certificate of appealability even though this Court had already granted review on that very question in **Luis v United States** 578 U. S. ___, on June 8, 2015.

It is petitioner's contention that the State of California has a legal obligation in its licensing of criminal defense counsel to protect the public from these very acts, as Deputy District Attorney Newman brought to the attention of the Court and nothing was done.

Moreover, the State Bar knew at all times of Masuda's conduct and decided to do nothing. This is imputed to the State of California.

CONCLUSION

Petitioner requests that this Court grant this Writ.

These acts of the California State Bar as well as the California Court system to protect the public from these serious violations of the Rules of Professional Conduct, which actually places the criminal defense counsel's interest to the advance retainer fee before the fiduciary to the client.

Here the California Court's places the criminal defense counsels' rights to collection of a non-refundable retainer before a criminal defendant's rights to conflict free legal representation in a criminal case, which deprived petitioner of his right to legal counsel of his choice.

This is the current standard by both the California Supreme Court and the California State Bar, preventing the "fundamental rights" to legal representation in pre-trial motions in criminal cases for a refund of a criminal defendant's property so petitioner could retain legal counsel of his choice.

The California Courts hold that this denial of legal counsel under these facts as stated above are not "structural error" by stating "We Disagree". A 19.

This failure of the State Government denied petitioner his ability to retain legal counsel of his choice see *Luis v United States* 578 U.S. __ (2016), which prohibits said acts by the State of California.

Dated

September 5 2019

Respectfully submitted.

Kenneth Rogers

Kenneth Rogers