
No. _____

**IN THE SUPREME COURT
OF THE UNITED STATES**

JOSHUA JAKE WHITE,

Petitioner,

v.

**MARK NOOTH, Superintendent,
Snake River Correctional Institution,**

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Counsel failed to object to prejudicial testimony.

Specifically, the State's expert's testimony vouched for the alleged victim's allegations of abuse in a criminal case that amounted to a credibility contest between the accused and the accuser because there was no physical evidence of abuse.

Record evidence demonstrated:

- Challenges to such testimony were available under existing law;
- Competent attorneys routinely challenged this type of testimony because it was expected that the Oregon Supreme Court would take up the issue; and
- The Oregon Supreme Court granted relief on such a challenge while Petitioner's case was on appeal.

May a court evaluating the reasonableness of trial counsel's failure to make this meritorious challenge under the Sixth Amendment effectively disregard evidence that it was the prevailing professional norm to challenge such evidence?

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The petitioner, Joshua White, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on May 21, 2019.

OPINIONS BELOW

On June 11, 2018, the United States District Court for the District of Oregon granted habeas corpus relief, ordering a new trial based on findings that both trial and post-conviction counsel had provided ineffective assistance in overlooking a meritorious challenge to key expert testimony that was rooted in longstanding precedent and that would have prevailed in the state appellate courts. Appendices C, D. On May 21, 2019, the United States Court of Appeals for the Ninth Circuit reversed in a memorandum decision. Appendix B. On July 24, 2019, the Ninth Circuit denied Petitioner's petition for rehearing. Appendix A.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

A. State Trial Court Proceedings.

In 2006, Petitioner had a bench trial in Oregon on charges of sexual abuse. There was no physical evidence of any abuse. Instead, the trial "boiled down" to a credibility contest between the alleged victim, who testified she had been abused,

and Petitioner, who denied any abuse. *E.g.*, CR 19, at 89-97, 302-16.¹ The State acknowledged that there were inconsistencies in the alleged victim's accusations. *E.g.*, *id.* at 323-26, 333-34.

To bolster its case for the alleged victim's credibility, the State called as an expert a nurse who evaluated the alleged victim at a facility for evaluating claims of abuse. The nurse implied to the jury that she believed the victim's allegations by testifying that she recommended the alleged victim undergo treatment to deal with the issue of sexual abuse. Specifically, the nurse testified that she conducted a physical examination of the alleged victim that neither corroborated nor invalidated the allegations. ER 68, 80-83. The nurse also participated in an interview in which the alleged victim indicated she had been touched inappropriately. *Id.* Based solely on the interview, as the nurse recounted in her trial testimony, the nurse recommended that the alleged victim undergo "counseling to deal with the issue of sexual abuse." ER 90.

Further, the defense was that the alleged victim's disclosures were riddled with inconsistencies, which, the defense claimed, undermined the credibility of the complainant's allegations. *E.g.*, CR 19, at 99-109, 342, 345-46, 356-59. On this

¹ "CR" refers to the District Court Clerk's Record, which is contained at the end of the appellate Excerpt of Record, which is referred to herein as "ER."

point, the nurse offered her expert opinion that it is common for children to disclose abuse incrementally, normalizing the inconsistencies in the alleged victim's disjointed disclosures. ER 89-90.

Counsel failed to object to this testimony under Oregon law, including under the state analogue to the federal *Daubert* standard, which excludes this type of pseudo-scientific vouching and Oregon's longstanding prohibition on one witness testifying about the credibility of another witness. The court ultimately convicted Petitioner and sentenced him to over sixteen years in prison. CR 18, at Ex. 101.

B. Oregon Criminal Defense Attorneys Regularly Challenged Expert Testimony Like That Of The Nurse Here.

The record in this case demonstrates that, at the time of Petitioner's trial, Oregon criminal defense attorneys were regularly challenging this type of testimony by sexual abuse evaluators in cases, like Petitioner's, that amounted to a credibility contest between the victim and defendant. SER 1-47. These challenges were grounded in decades of Oregon Supreme Court precedent. SER 8, 11-12, 20-22, 28-31. Competent attorneys recognized that intermediate appellate court decisions left open questions in this area and deviated from the principles spelled out in earlier Oregon Supreme Court precedent. SER 2, 12, 17, 32. This binding precedent prohibited vouching for the credibility of another witness by characterizing the witness's testimony or endorsing it based on pseudo-scientific language or

principles. That this area was “promising” and ripe for challenge was regularly discussed at continuing legal education seminars and on the primary professional listserv for criminal defense attorneys. SER 2, 5-6, 9, 11-12, 19-20, 28. Attorneys who were “reasonably attuned to the practice and expectations of the legal community” regularly filed motions in limine to challenge evidence akin to the nurse’s testimony here. SER 8-14, 19-22. It was widely anticipated by the Oregon criminal defense bar that the Oregon Supreme Court would take up a case and address this issue. SER 2, 8-14, 16-23, 28-29, 31-32, 45-47. As a result, the norm among competent defense attorneys was to pursue the issue until the state Supreme Court took it up. *Id.*

C. Direct Appeal.

Indeed, on the day Petitioner filed his notice of appeal, the defense bar’s expectation was fulfilled when the Oregon Supreme Court granted review in one such appeal. *State v. Southard*, 344 Or. 401 (2008). Before Petitioner’s appellate brief was filed, the Oregon Supreme Court issued its decision in *State v. Southard*, 347 Or. 127 (2009). It held that an expert’s diagnosis of sexual abuse in the absence of confirming physical evidence is inadmissible because, in essence, it is nothing more than a statement that the expert believes the victim’s report. *Id.* As such, the testimony has little probative value, telling the jury little that it could not determine

on its own. *Id.* at 111-12. On the other hand, the Oregon Supreme Court held the expert testimony posed a “great” risk of prejudicing the jury because the jury might substitute the expert’s credibility assessment for its own. *Id.* at 112. While Petitioner’s case was still pending in the Oregon Court of Appeals, the Oregon Supreme Court also ruled that testimony about the characteristics of the alleged victim’s report that led evaluators to diagnose abuse was also inadmissible. *State v. Lupoli*, 345 Or. 690 (2009).

Despite *Southard* and *Lupoli*, nearly a month later, Petitioner’s appointed counsel filed a brief claiming there were no appellate issues of merit in Petitioner’s case, leaving Petitioner to file a *pro se* brief. CR 18, at Ex. 103. The intermediate appellate court affirmed without opinion and the Oregon Supreme Court denied review. *Id.* at Exs. 106, 107.

D. Oregon Treats This Type Of Expert Vouching Testimony As Harmful, Finding No Reasonable Strategy Would Support Not Objecting.

Over the next two years, the Oregon appellate courts ruled that the admission of expert testimony by a sexual abuse evaluator that vouches for the credibility of the alleged victim will, essentially, always be prejudicial and warrant a new trial where, as here, the case involves a bare credibility contest:

- whether the issue was preserved or unpreserved, *e.g.*, *State v. Lovern*, 234 Or. App. 502 (2010); *State v. Merrimon*, 234 Or. App. 515 (2010);

- whether the testimony about the diagnosis was explicit or implicit, *State v. Volynets-Vasylchenko*, 246 Or. App. 632 (2011); and
- whether the case involved a bench or jury trial, *State v. Davilia*, 239 Or. App. 468, 478 (2010); *see also State v. Potts*, 242 Or. App. 352, 353 (2011) (citing *Davilia* and *State v. Marrington*, 335 Or. 555 (2003)).

Because expert vouching testimony is so damaging in a credibility contest, the Oregon courts have found no tactical reason could support a choice not to object. *State v. Feller*, 247 Or. App. 416, 421 (2011).

E. State Post-Conviction Relief Proceedings.

Thereafter, in July 2012, post-conviction counsel filed Petitioner's post-conviction relief petition, challenging his conviction based on trial counsel ineffectiveness. ER 56-60. Post-conviction counsel did not include a claim that trial-counsel was ineffective for failing to challenge the nurse's testimony. Instead, post-conviction counsel asserted other run-of-the-mill failures of trial counsel that amounted to weaker claims. *Id.* The post-conviction court denied relief. ER 53-55. The intermediate appellate court affirmed without opinion and the Oregon Supreme Court denied review. CR 18, at Exs. 168, 173-75.

F. Federal Habeas Corpus Proceedings.

At issue in this appeal is the claim that Petitioner's trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments to the United States Constitution when he failed to challenge the nurse's expert testimony.

ER 51-52. The testimony implied that the nurse believed the complainant's allegations of abuse despite the lack of any corroborating physical or other evidence. *Id.* As the foregoing discussion of state law establishes, but for counsel's failure to preserve the objection, Petitioner would have obtained appellate relief in the form of a new trial. *Id.*

It is not disputed that this issue is procedurally defaulted. However, in the lower courts, Petitioner argued that the default should be excused under *Martinez v. Ryan*, 566 U.S. 1, 14 (2012). Petitioner provided evidence that the relevant "prevailing professional norm" was to raise challenges to expert sexual abuse evaluator testimony because those challenges appeared "promising" as described above. SER 2, 11, 19-20, 28. Several Oregon criminal defense attorneys submitted affidavits describing this norm. SER 1-47. The State did not supply any contrary evidence. Nor was there any strategic reason not to challenge the nurse's damaging pseudo-scientific expert testimony on the central issue in the case. Petitioner argued that, by not raising the claim that trial counsel was ineffective in failing to make this challenge, post-conviction counsel also provided ineffective assistance, which prejudiced Petitioner because this was a strong claim that would have resulted in relief.

The District Court agreed, making factual findings based on the uncontroverted record evidence that the relevant prevailing professional norm was to challenge the type of expert testimony at issue here because attorneys viewed this area of law as ripe for challenge and that counsel's conduct fell below this norm. Appendix C; ER 4-25. The District Court found that the procedural default of this claim was excused, granted relief, and ordered a new trial.

The Ninth Circuit reversed in a memorandum decision, stating in a footnote: "Although the district court determined that "it was the prevailing professional norm, at the time of [White's] trial, to object . . . to the admissibility of diagnoses of child sexual abuse absent physical evidence," such "[p]revailing norms of practice . . . are guides to determining what is reasonable, *but they are only guides.*" Appendix B, at 3 n.2 (citing *Strickland v. Washington*, 466 U.S. 668, 688 (1984) (emphasis added)).

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the Ninth Circuit's memorandum decision erroneously diminishes record evidence critical to the *Strickland* analysis and, in doing so, conflicts with decisions of this Court, effectively reducing both *Strickland* and *Martinez* to nullities. The Ninth Circuit's decision also contravenes this Court's precedent that requires federal courts to defer to the state courts on issues of state law.

The Ninth Circuit's decision provides so much latitude to counsel to make unreasonable decisions without regard to the existing law or his client's interests that it strips the standards of both *Strickland* and *Martinez* of any meaning. At trial, the alleged victim's credibility was key. Yet, trial counsel failed to raise an available challenge that would have prevented the State's expert from bolstering the credibility of the alleged victim's otherwise bare allegation of abuse. Open questions and tensions present in existing case law invited this very challenge. No strategic reason weighed against making the challenge. However, counsel simply did not do the research or consult with other attorneys. Had he done this due diligence, he would have been encouraged to raise the challenge. Counsel's mistake was ineffective pure and simple.

Rather than reach this conclusion, as the District Court did, the Ninth Circuit glossed over the relevant facts and law and turned on its head *Strickland*'s requirement that the reasonableness of counsel's performance be evaluated in light of the relevant standard of care as evidenced by the then-prevailing professional norms. *Strickland*, 466 U.S. at 688. The Ninth Circuit improperly disregarded the best evidence of what attorneys in the trenches were doing at the time that Petitioner's trial attorney failed to act. While ABA model standards might be mere

“guides” for attorney conduct, *Strickland*, 466 U.S., at 88, the evidence here is different.

The Ninth Circuit also seriously misapplied *Martinez*’s cause-and-prejudice analysis. *Martinez* held that a procedural default is overcome where appointed counsel “in the initial-review collateral proceeding” should have raised an IAC claim but “was ineffective under the standards of *Strickland*” and “the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit.” *Id.* The Ninth Circuit’s finding that post-conviction counsel could have reasonably winnowed this claim—when it was far and away the strongest claim counsel could have raised—shrinks to a nullity *Martinez*’s “substantiality” component. The Ninth Circuit wholly disregards the fact that the Oregon courts have treated the type of expert evidence that Petitioner’s counsel failed to challenge as highly prejudicial and game-changing in any situation where, as here, the case boils down to a credibility contest.

At the same time, the Ninth Circuit failed to defer to Oregon’s interpretation of its own law. The Ninth Circuit relied on a decision that Oregon’s highest court has explicitly held does not apply to the scenario presented by this case. Likewise, the Ninth Circuit cited lower state court decisions as “binding” without appreciating that those decisions were in obvious tension with precedent from Oregon’s highest

court. That point was decisively confirmed when the Oregon Supreme Court rendered its decision in *Southard*.

A. The Ninth Circuit Discounted Relevant Record Evidence Of The Prevailing Professional Norm.

“When a convicted defendant complains of the ineffectiveness of counsel’s assistance, the defendant must [first] show that counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 687-88. This Court has “declined to articulate specific guidelines for appropriate attorney conduct and instead [has] emphasized that ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (citing *Strickland*, 466 U.S. at 688).

The record in this case contains the best possible evidence of the prevailing norms—affidavits from attorneys operating in the trenches at the relevant time. The affidavits explain that case law at the time invited challenges that were not just “promising” but were meritorious. SER 1-47. Competent attorneys recognized and raised challenges grounded in existing law and expected that Oregon’s highest court would grant review to clarify the law after the lower court decisions appeared to deviate from Oregon Supreme Court precedent. *Id.* It was entirely foreseeable that the challenges would ultimately prevail. *Id.*

The Ninth Circuit latched on to language from this Court's *Strickland* decision that simply does not address the evidence at issue in this case. Appendix B, at 3 n.2. Specifically, *Strickland* explained that ABA standards may be used as "guides" to what attorney conduct is reasonable, but emphasized that such standards are not a trump card because there is a "range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 688 ("Prevailing norms of practice as reflected in American Bar Association standards and the like, e.g., ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980) ("The Defense Function"), are guides to determining what is reasonable, but they are only guides.").

The evidence here is different from a practice standard or "guide." The evidence in this case demonstrates that there was a meritorious evidentiary challenge to a category of evidence that the Oregon Supreme Court deems improper and prejudicial. Further, the evidence demonstrated that the norm among competent practitioners at the time of Petitioner's trial was to raise this challenge. Due to his ignorance of the availability of the challenge, Petitioner's attorney simply fell below this established standard of care. This is akin to a situation where the Fourth Amendment supplies a meritorious basis for suppressing key evidence, but the attorney, unaware of this favorable law, fails to move to suppress. *Cf. Kimmelman v. Morrison*, 477 U.S. 365 (1986). No strategy can insulate counsel's failure to

challenge this prejudicial evidence. Yet, the Ninth Circuit erroneously discounted this important evidence. *Strickland*'s measure of professional competency—"reasonableness under prevailing professional norms"—is precedential, not a vague "guide." So where, as here, based on voluminous evidence, the petitioner establishes that his counsel's conduct fell below the standard of care by deviating sharply from the professional norm, the Ninth Circuit should have affirmed the District Court's findings. Instead, the Ninth Circuit treated language essential to *Strickland* as a mere suggestion in order to substitute its own judgment.

B. The Ninth Circuit's Findings About Post-Conviction Counsel's Decision-Making Process Are Not Supported By Evidence Or Caselaw.

In focusing on the *Martinez* analysis, the Ninth Circuit made several assumptions about what post-conviction counsel might have decided in omitting this substantial IAC claim. Appendix B, at 3-4 & n.3. Initially, the Ninth Circuit implicitly assumed, without evidence, that post-conviction counsel actually made a decision to omit the claim. The available evidence demonstrates, however, that counsel's omission was based on ignorance. Counsel simply failed in his duty to conduct basic research and to know the law relevant to his client's cause, including his duty to know what issues were percolating in the courts.

Attorneys have a basic duty to be familiar with the relevant law and to maintain competence by keeping abreast of changes in the law and of issues that are

percolating in the courts. *Hinton v. Alabama*, 571 U.S. 263, 274 (2014). This is the central failure of trial counsel in this case. Counsel failed to research the relevant Oregon cases that provided fodder for a challenge. The Oregon Supreme Court's decisions, none of which are mentioned in the Ninth Circuit decision and all of which are discussed in detail in the briefing of this case, collectively foreshadowed that an expert's opinion on the believability of the alleged victim would be held inadmissible if the issue were to be decided by the Oregon Supreme Court. *See Appellee's Answering Brief*, at 24-27.

This case is not about counsel's failure to see the future or to be prescient or clairvoyant, or to anticipate an unforeseeable change in the law. This is not a case about counsel's failure to anticipate a change in the law. Rather, this case is about an attorney's basic duty to know the law relevant to his client's cause and to act reasonably under the prevailing professional norms. Other attorneys, adhering to these norms, did basic research and made available challenges to this inherently prejudicial evidence. Their clients obtained new trials.

C. Post-Conviction Counsel Could Not Reasonably Have Winnowed The Strongest Claim.

The Ninth Circuit incorrectly concluded that post-conviction counsel could have acted reasonably in "winnowing" out this claim in favor of other claims that were more likely to prevail. Appendix B, at 4. As support for this conclusion, the

Ninth Circuit cited this Court’s decision in *Smith v. Murray*, 477 U.S. 527, 536 (1986), which, in turn, cited *Jones v. Barnes*, 463 U.S. 745 (1983). Both decisions affirm the propriety of *direct appeal* counsel winnowing claims. Unlike *Jones* and *Smith*, the conduct of direct appeal counsel is not at issue here. Neither *Smith* nor *Jones* held—or even suggested in any way—that the role of post-conviction trial counsel is to winnow claims. Indeed, post-conviction counsel’s work is different. Appellate counsel scours a cold trial court record for issues while post-conviction counsel investigates and develops issues outside that record. Where post-conviction counsel fails to raise an issue in the petition, the issue will be forever waived and no evidence will be developed in support of it.

In any event, the foregone claim was stronger than the other claims on which counsel proceeded. Indeed, the foregone IAC claim would have been the strongest claim post-conviction counsel could have raised. The Ninth Circuit did not undertake any analysis of the other claims raised by post-conviction counsel. None of those claim had any realistic likelihood of success. The Ninth Circuit never suggested that they did. Certainly none was more likely to prevail than the claim now at issue, which would have prevailed under *Southard*. Counsel’s decision to “winnow” out the best available claim cannot be reasonable.

D. The Foregone Challenge Was Meritorious, Not “Fruitless.”

The Ninth Circuit next found that post-conviction counsel could have determined that trial counsel was not required to raise a “fruitless objection” or “to anticipate a change in the law.” Appendix B, at 2. As support for its finding, the Ninth Circuit cites its own decisions in *Lowry v. Lewis*, 21 F.3d 344, 346 (9th Cir. 1994), and *Miller v. Keeney*, 882 F.2d 1428 (9th Cir. 1989). Neither case applies.

The claim at issue here was neither “fruitless” nor “meritless,” in contrast to the claims at issue in those Ninth Circuit cases. To the contrary, the objection here not only was firmly grounded in well known, regularly applied Oregon Supreme Court precedent, but was “promising” and, eventually, meritorious.

Unlike counsel here, the attorney in *Lowry* did the appropriate research and consulted with other attorneys about whether to file a motion to suppress. Based on that due diligence, the attorney concluded the motion had “no merit.” *Id.* Here, there is no evidence that counsel conducted any research at all. Counsel did not join the ongoing professional conversation. Had counsel done so, the record evidence in this case tells us that other attorneys—at CLEs and on the relevant list-serv—would have encouraged counsel to raise this issue. Tensions in the caselaw and questions left open would have provided counsel further encouragement to pursue the challenge here.

The Ninth Circuit, however, disregarded as a mere “guide” record evidence that attorneys, in fact, anticipated that the Oregon Supreme Court would clarify that it meant what it had previously said. In other words, *Southard* was both foreseeable and anticipated. *Southard* was a reaffirmation of longstanding precedent intended to rein in the lower courts, which had incorrectly dealt with this issue. There was no need for counsel to be prescient or clairvoyant to raise the challenge foregone here. To be prescient or clairvoyant is to be prophetic or to have knowledge of future events before they take place. No such mystical ability was required here. Counsel merely had to fulfill his basic duty to know the relevant existing law and raise the objection as competent attorneys around the state were doing. Challenges raised by competent attorneys led to new trials being ordered in dozens of cases. Petitioner missed out on obtaining this relief because his attorney failed to follow the professional conversation, deviating from the norm and the standard of care.

E. The Ninth Circuit Improperly Disregarded The Applicable State Law On State-Law Questions.

The Ninth Circuit improperly stated that the nurse’s testimony was admissible under state law at the time of Petitioner’s trial. Appendix B, at 3 (citing the state-court intermediate appellate court decisions in *Sanchez-Cruz* and *Wilson*). This conclusion rests on the false premise that these Oregon intermediate appellate court decisions were “binding.” *Id.* As the Oregon criminal defense bar knew at the time,

these lower court decisions did not constitute settled law. *Montana v. Wyoming*, 563 U.S. 368, 377 (2011) (the state’s highest court is the final arbiter of state law).

Indeed, the Ninth Circuit’s conclusion is refuted by the record evidence that *Wilson* and *Sanchez-Cruz* were in tension with precedent from Oregon’s highest court and that *Sanchez-Cruz*, in particular, which involved physical evidence that corroborated the victim’s allegation of abuse, left open the question presented in this case. Indeed, the Oregon Supreme Court assumed “that an attorney exercising reasonable professional skill and judgment would have objected to the medical diagnosis despite” contrary court of appeals decisions. *Jackson v. Franke*, 364 Or. 312, 321 (2019). Rather than address this critical tension, the Ninth Circuit downplays the record evidence as a mere “guide” rather than recognizing it for what it is—a norm of practice or standard of care.

Contrary to Oregon law, the Ninth Circuit incorrectly concluded that post-conviction counsel could reasonably “assume that any questionable evidence [was] discarded” by the judge at his bench trial. Appendix B, at 4. As support for this proposition, the Ninth Circuit cited the 1966 Oregon Supreme Court decision in *State v. Cafarelli*. But the Oregon Supreme Court explicitly held that *Cafarelli* does not apply to the situation presented by this case—a bench trial involving sexual abuse evaluator’s vouching testimony. *Marrington*, 335 Or. at 565-66 (rejecting

application of *Cafarelli* where, as here, the trial court failed to mention the offending expert testimony in its announcement of its decision). Oregon treats the evidence counsel failed to challenge as prejudicial in any situation. Appellee's Answering Brief, at 40, 42. Yet, the Ninth Circuit directly contradicted Oregon law on this question of state law. *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) ("It is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.").

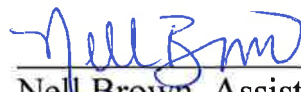
F. The Ninth Circuit Made Assumptions Not Based On Evidence Rather Than Remanding For Factual Development.

The record undercuts each of the Ninth Circuit's assumptions about post-conviction counsel's thought process. At a minimum, the Ninth Circuit should have remanded this matter to the District Court for further evidentiary development of the actual reasons for counsel's inaction. This Court should, at a minimum, grant certiorari, vacate the Ninth Circuit's memorandum decision, and order it to remand this matter to the District Court for further proceedings.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be granted.

DATED this 22nd day of October, 2019.



Nell Brown, Assistant Federal Public Defender
Attorney for Petitioner