No. 19-6532

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PEDRO J. AMARO — PETITIONER
(Your Name)

vs.

New Mexico Attorney General — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PEDRO J. AMARO
(Your Name)

P.O. Box 520
(Address)

SANTA ROSA, N. MEX. 88435
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Involves: "Capital Offence" cases;

Class Action Habeas Corpus; lack of jurisdiction claim

Injudiciously predicated by the lower courts' striking refusal to yield to a 2003 change in law to Fed. R. Civ. P. 23, in an exceptionally important atypical Habeas Rule 2(d)-based 'judgment-specific' class action habeas corpus case affecting the "convicted felon" status of thousands of persons - including several in "Capital Offense" cases - through a "failure to acquire jurisdiction" claim (amongst others) stated against the 9th Judicial District Court of New Mexico ultimately stemming from the public exposure of the District's 32-year-long violation of due process requirements of U.S.C.A. Const. Amends V and XIV, through secret application of an illicit "custom" which produced procedurally defective and structurally deficient Grand Jury "Bills of Indictment" that were legally "invalid at issuance," your Petitioner, PEDRO J. AMARO, seeks review on the following questions as well as consideration of any others "fairly included." (App. K)

1. Whether the Court of Appeals prejudicially abused its discretion in denying both COA (App. A) and the Rehearing request (App. E; without comment) to review the U.S. District Court's summary dismissal of the seldom-used habeas petition (Rec.; Doc. 1) on procedural grounds, where the district court dismissed "all class action claims based on Amaro's 'non-attorney' status without reaching the underlying constitutional claims (Apps. A, B, and D);
(a) contrary to the Supreme Court's principles as announced in Slack v. McDaniel; and/or,
(b) where the lower courts have ruled that Amaro - as a 'non-attorney' "cannot adequately represent the interests of the putative class" (App. A)

2. Whether the decision below offends the U.S. Constitution's Habeas Corpus Suspension Clause, Art. I, §9, cl. 2, because the 10th Circuit's restriction on whom may apply for habeas corpus relief is an unjust restraint or a "suspension" of the "Great Writ" to a particular class of persons or applicants and purports to preclude the court from entertaining an original application for habeas corpus relief.

3. Whether the lower courts' rulings in the present case, which is first and foremost a habeas corpus ad subjiciendum action, are rendered void and of no effect through each respective court's persistent disregard of affirmative responsibilities, where the improper conduct marked by: (a) non-compliance with the modern standards of habeas corpus practice and procedure; (b) non-performance of required courses of action pursuant to fixed provisions of "Mandatory

statutes; and/or, (3) the unreasonable stare decisis-based summary dismissal of "all class action claims" (Apps. A, B, C, D, and E) on inapplicable procedural grounds with inapt reliance on obsolete case law decided before the Legislature's 2003 Amendments to Fed. R. Civ. P. 23, which fails to reflect changes to subdivision (c) or embrace the 'new' additions of subdivisions (g) and (h), which necessarily affect and alter the previous nature of the Rule's (a)(4) "Adequacy" requirements (with respect to a Pro Se Petitioner's legal qualifications by making it a "mandatory" act for the court itself to appoint qualified legal counsel to a class upon certification.

4. Whether, as a matter of law, the present action is maintainable as a "class action," notwithstanding a "rigorous analysis" and proper determination of Amaro's - post 2003 Amendment's - Rule 23(a)(4) "Adequacy" as a "Class Representative" pursuant to the Court's determination in Perrott v. United States Banking Corp., D. Del. 1944, 53 F. Supp. 953, where the Court held:

> "It seems to me the rule does not go beyond procedure.... Simply because a particular plaintiff cannot qualify as a proper party to maintain such an action does not destroy or even whittle at the cause of action. The cause exists until a qualified plaintiff can get it started in federal court."

where the Habeas Rule 2(d)-based habeas corpus petition challenges only the judgments of a single State-court by targeting the court's 32 year secret operation of an illicit "custom" and "serious violation of grand jury rules" with utilization of forbidden practices by the court or its officers and similarly affecting numerous cases regardless of the particular facts of any individual case, thereby leaving the door open to thousands of potentially "adequate" "Class Representatives." (App. K)

5. Whether, as a matter of law or to correct a manifest miscarriage of justice, post-conviction Defendants are duly entitled to "Due Process Clause" protection and/or "Equal Protection" relief from wrongful prosecutions, illegally imposed sentences and any continuing terms of present confinement adjudicated by the 9th Judicial District Court of New Mexico in the absence of jurisdiction, where members of the proposed class are similarly situated to the person of Enrique DeLeon who was granted Constitutional relief from the "serious violation of grand jury rules" by the Supreme Court of New Mexico in DeLeon v. Hartley, where the Court "tossed out" the State's original "double-homicide" indictment against DeLeon as the 'agents of justice' in rural New Mexico's 9th Judicial District - in their "custom" covertly utilized "condemned conduct"

and long-forbidden Grand Jury-related practices which plainly deprived 'Targets' of fair-minded, legally constituted grand juries and of the process clearly prescribed in accordance with requirements of 28 U.S.C.A. Const. Amends. V and XIV, thereby resulting in patently "illegal" and "unconstitutional" grand juries whose fundamentally tainted and structurally deficient proceedings could neither return legally valid "Bills of Indictment" nor confer the requisite jurisdiction over either the subject matter or person(s) to be prosecuted.

6. Whether the Court of Appeals' prejudicially abused its discretion in denying both COA (App.A) and the Rehearing request (App.E, without opinion) to review the U.S. District Court's summary dismissal of Amaro's Court-prompted, Order-initiated (App.B) individual claims under 28 U.S.C. § 2244(d)(1)'s "Time Limitations" where the stated ground is arguably not applicable given:

(a) the State-court's conduct in perpetually thwarting Amaro's attempts to obtain key court-records critical to the perfecting of a 'Petitioner-specific' habeas corpus petition;

(b) the 'recent' exposure of the District's "custom" irrefutably tainting the Grand Jury process and insuperably barring the State from acquiring jurisdiction in Grand Jury-based cases "since 1979", until 2012/2013 (App.K);

(c) the "Actual Innocence" gateway claim supported by 'new' evidence (App.L, 1) bearing a presumption of conclusiveness, and claiming "inter alia, prosecutorial misconduct, judicial misconduct, and ineffective assistance of counsel" (App.B);

(d) the Court's Order requiring Amaro to submit his individual claims in a "Capital Offense" case without the aid of counsel normally afforded to indigent Petitioners in such cases; and

(e) the sheer illegality of his imprisonment owing to the legal invalidity of the prosecution against his person in the absence of jurisdiction where jurisdictional issues are non-waivable and never forfeited, and "may be raised at any time"

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

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

Hector Balderas, New Mexico Attorney General
P.O. Drawer 1508, Santa Fe, N. Mex. 87504-1508

Vincent Horton, Warden, Guadalupe County Correctional Facility
P.O. Box 520 Santa Rosa, N. Mex. 88435

TABLE OF CONTENTS

INDEX TO APPENDICES

APPENDIX J 10th Circuit Order Denying COA

APPENDIX K New Mexico Supreme Court Opinion DeLeon v. Hartley, and documentation supporting underlying cause of action

APPENDIX L 'New' Evidence pertaining to Actual Innocence gateway claim.

APPENDIX M New Mexico Supreme Court Mandate Denying Certiorari

APPENDIX N State district court Order Denying Petitioner's Petition For Clarification of case status And Order Denying Petitioner's Motion For Class Certification And Order Closing This Matter.

APPENDIX O New Mexico Supreme Court Denial of Mandamus

APPENDIX P State District Court Order Denying Habeas Corpus Petition

APPENDIX Q State Habeas Petition

APPENDIX R Notice

APPENDIX S,1; S,2 Judgment and Sentence 2003, and Judgment & Sentence 2004 (same docket No. bifurcated charges)

APPENDIX T Letter From Attorney General Re: Wrongful Imprisonment

APPENDIX U Kennedy & Oliver suit notice

APPENDIX V Supplemental Report; Det. Gulley

APPENDIX W Prosecutorial Misconduct; forcing plea, pretrial publicity, false statement to Court

APPENDIX X News article regarding competency evaluation

APPENDIX Y News article "Pleas"; 44% closure by plea deals - In absence of jurisdiction

APPENDIX 2 News Articles; Prosecutorial Misconduct, ineligibility to hold public office: Sexual Misconduct

APPENDIX AA Federal Habeas w/ initiatory Motions

Note: "L, 2" was intended to be the "Brief-in-Chief" filed by the Appellate Attorney, but our prison library is out of toner and I can't wait til tomorrow to get the copy from the Education Office. (A)

TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

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

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

The second opinion of the United States district court appears at Appendix C to the petition and is also unpublished.

JURISDICTION

[✓] From the federal courts:

The date on which the United States Court of Appeals decided my case was July 11, 2019. A timely petition for rehearing was denied on August 1, 2019 (App. E). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and/or §1241(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution provides in relevant part: "[T]he Laws of the United States... shall be the supreme Law of the Land... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
U.S.C.A. Constitutional Amendment Five: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment of [a legally valid] indictment of a [legally constituted and unbiased] grand jury..." , and "... nor shall any person... be deprived of life, liberty, or property without due process of law".
U.S.C.A. Constitutional Amendment Fourteen: "... nor shall any state deprive any person of life, liberty, or property without due process of law..." , and "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution, Article I, Section 9, clause 2: "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."
and also
U.S.C.A. Constitutional Amendment Five: "... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;" and,
U.S.C.A. Constitutional Amendment Eight: "... nor [shall] cruel and unusual punishments [be] inflicted."

STATEMENT OF THE CASE

Amid a chaotic mess of fundamentally flawed proceedings where the lower courts, for lack of familiarity with "Habeas Law" and the nuances of Habeas Corpus practice and procedure, have prejudicially entangled a seldom-used Habeas Rule 2(d)-based judgment-specific class action 28 U.S.C. § 2254 "Petition For A Writ Of Habeas Corpus By A Person In State Custody" with the typical principles of 'civil law' and standards regularly applied to 'normal' suits proceeding under Fed. R. Civ. P. 23, this case now raises important questions of law related to:

A. the meaning of the Legislature's 2003 Amendments to Fed. R. Civ. P. 23 and their effect(s) upon the Rule's two-factor "Adequacy" requirements under 23(a)(4);

B. the preemptive scope of Fed. R. Civ. P. 23 in a true Habeas Rule 2(d)-based judgment-specific class action § 2254 habeas corpus petition premised squarely on a patently meritorious "failure to acquire jurisdiction" claim where the cause exists regardless of the Petitioner's 'non-attorney' status and/or personal ability to qualify as a "proper plaintiff" irrespective of the Legislature's 'curative' 2003 Amendments to Rule 23 (therewith mandating the court's own appointment of qualified counsel to a class upon certification);

C. the U.S. Constitution's Habeas Corpus Suspension Clause as the court's interpretation of Fed. R. Civ. P. 23(a)(4) restricts a particularly described class of persons - essentially, indigent petitioners who cannot afford to hire counsel - from initiating class action proceedings (even in a habeas corpus case premised on a patently meritorious "failure to acquire jurisdiction" claim;

D. the effect of the lower courts' contumacious failure to perform specific judicial acts and/or administrative functions as required by "Mandatory Statutes";

E. the legal status of a judgment-specific class action habeas corpus case where the State's deprivation of rudimentary fundamental Constitutional Rights is nakedly clear but where the lower courts, in clear disregard of the Legislature's 2003 Amendments to Fed. R. Civ. P. 23, are holding the particular Plaintiff/Petitioner initiating the case to be a party that "cannot adequately represent the interests of the putative class" (App. A) based solely on his personal status as a 'non-attorney' - where the court itself is mandated to appoint qualified legal counsel to a certified class;

F. whether, regardless of all else, a State may sustain criminal convictions and continuing imprisonments and/or restraints upon the liberty of persons pursuant to judgments in which the court incipiently divested itself of all legal right(s) and/or interest(s) to engage in or proceed with the judicial action(s) against the accused due to its choice to snub the demands of U.S.C.A. Constitutional Amendments Five and Fourteen through replacement of prescribed Grand Jury rules of procedure with an illicit "custom" that unabashedly violated Federal Due Process rights where State-court judges unethically granted absolute control of the Grand Jury process to personnel of the District Attorney's Office (App. K);

6. the status of Amaro's individual 'Petitioner-specific' "Actual Innocence" gateway with 'new' evidence supporting a 'vindictive prosecution' claim (App. L) in addition to the "inter alia" claims of "prosecutorial misconduct, judicial misconduct, and ineffective assistance of counsel" acknowledged by the District Court (App. B), as well as claims of: Brady violations galore; improper police procedures; double jeopardy violations; illegal in-premises arrest without a warrant; a slew of 'automatic-reversal'-type errors acknowledged by the State district court (App. P); and selective prosecution, amongst others, where the United States District Court, sua sponte, exercised its discretion to "[take] judicial notice" of Amaro's State-court "Capital Offense" "First-Degree Murder" conviction with a Court-Order for him to "show cause why his own habeas should not be dismissed as untimely.... within 30 days," and without the aid of counsel normally appointed to indigent Petitioners in "Capital Cases" under 18 U.S.C. §3599(a) (App. B), where the Court of Appeals later referred to the particularly identified claims and specifically stated details as "disturbing allegations... [which] did not establish Mr. Amaro's actual innocence" (App. A), where this case further raises important questions of law in relation to:

1) the Court's abusive use of discretion in requiring an indigent Petitioner in a "Capital Case" to submit what is in fact and essence an individual 'Petitioner-specific' habeas corpus petition "within 30 days" without the assistance of counsel typically afforded to such Petitioners;

2) what must be pleaded by a pro se Petitioner whose "filings" are "liberally construe[d]" (App. A, n. 1) in order to trigger the fact-finding process in an "Actual Innocence" gateway claim pursuant to McQuiggin v. Perkins, where (pro se petitions liberally construed and "'need only set forth facts giving rise to the cause of action'" for appellate court to find that implicit claims were adequately presented in lower court, hence are cognizable on appeal (quoting Bounds v. Smith, 430 U.S. 817, 825 (1977))), Guadroz v. Lynaugh, 852 F.2d 832, 834 (5th Cir. 1988);

3) the effect of the State's perpetual frustration of Amaro's attempts to gain access to key court-records necessary to perfect a 'Petitioner-specific' habeas corpus petition upon "Equitable tolling" under 28 U.S.C. §2244(d)(1)(B);

4) what constitutes "exceptional circumstances" sufficient to either equitably toll time or by-pass §2244's "Time Limitations" altogether;

5) the applicability of §2244(d)(1)(D) to the "failure to acquire jurisdiction" claim spawned by 'recent' public exposure of the State-court's secret application of an illicit "custom" pertaining to the Grand Jury process as "[t]he grand jury proceeding is accorded the pre-

sumption of regularity, which generally may be dispelled only upon particularized proof of irregularities in the grand jury process" (U.S. v. Johnson, 319 U.S. 503, 512-513, 63 S.Ct. 1233, 1237-1238, 87 L.Ed 1546 (1943)), where the "particularized proof" in this case was not factually identifiable by Amaro until he was able to access a copy of the Opinion issued in DeLeon v. Hartley, 2014-NMSC-005, 316 P.3d 896 (App. K, 3); and,

G) at what point and under what circumstances does a "miscarriage of justice" exception become applicable, under 28 U.S.C. §2244 or §2254; and also,

H. whether the Court's language in 'jurisdictional-challenge' cases may be taken literally where the Court has said both, "subject matter jurisdiction never forfeited or waived; defects require correction regardless of whether error raised in district court"; and, "jurisdictional challenge to indictment may be raised at any time" (U.S. v. Cotton, and U.S. v. Gatewood, respectively).

The matter presently before the Court originated, at the Federal level, with Amaro's United States District Court (D-NM) filing of a seldom-used Habeas Rule 2(d)-based 'judgment-specific' class action §2254 habeas corpus petition planted squarely on a patently meritorious "failure to acquire jurisdiction" claim stated against the Ninth Judicial District Court of New Mexico which was eventually spawned in the aftermath of a former "Deputy District Attorney's" public exposure of a secretly operated illicit "custom" involving extreme prosecutorial misconduct (abuse of the Grand Jury process; abuse of judicial authority) and judicial malfeasance (wrongful transfer of judicial power(s), ministerial functions, and/or administrative duties to the District Attorney's Office), resulting in a procedurally defective and structurally deficient Grand Jury process, as conveyed by the New Mexico Supreme Court Opinion by Justice Richard C. Bosson in the case of DeLeon v. Hartley and the two related newspaper articles of: "Grand juries focus of legal controversy" and "Grand jury indictments overturned" (collectively attached as "Appendix K"), the sum of which is presented in the following three paragraphs:

Vigorously defending a private-practice client in 2012, Kirk E. Chavez, a former "Deputy District Attorney" for eastern New Mexico's 9th Judicial District, blew-the-whistle on the District's seditious practice of structurally-based procedural defaults in which the court's officers - as their "custom" - recklessly violated Federal Rights and Constitutional guarantees with wild disregard for the principle requirements of U.S.C.A. Constitutional Amendments V and XIV

through a covert scheme whereby the State district court judges complicitly granted absolute control over the Grand Jury and its process to the District Attorney's Office thereby enabling prosecutorial personnel to improperly seize-upon and exercise judicially-exclusive power(s) delegated strictly to the district court, and to fraudulently misrepresent themselves as having the legal authority to dismiss, select, summon, and convene grand jurors via ex parte communication with no involvement from the court.

Speaking from his own personal knowledge and prior experience with the "custom", Mr. Chavez expressed how the prosecutorial personnel impudently abused the grand jury process to gain a tactical advantage over the accused by selectively summoning or dismissing specific grand jurors so as to "stack-the-deck" against 'Targets' of the Grand Jury.

In public wrangling over the issue (former) State district court Chief Judge Teddy Hartley clearly stated that "as is the custom in Curry County and the 9th Judicial District... the job of notifying grand jurors of when to meet, excusing them, and replacing them from among a list of alternates was given to the district attorney's staff," with District Attorney "Matt" Chandler (now a State district court judge) further stating that this "custom" was "[a] practice conducted by district attorneys in Curry and Roosevelt counties since 1979."

As the District employed its illicit "custom" for approximately 32/33 years, literally thousands of convictions were wrongfully obtained pursuant to procedurally defective "Bills of Indictment" which were returned by illegally constituted grand juries whose very proceedings had no true power to confer the requisite jurisdiction over either the subject matter or person(s) to be prosecuted to the court.

In that prolonged span of time, several of the judgments procured in the absence of jurisdiction were in regards to "Capital Offense" cases (other than the Plaintiff/Petitioner's).

<u>At The Beginning:</u>

Unable to locate or obtain any information regarding the De Leon case from the prison's "Law Library," Petitioner Amaro posted a written request to the New Mexico Supreme Court's own "Law Library" seeking any information available. In August 2014, Plaintiff Amaro received a copy of the published Opinion - issued "to explain why the grand jury selection process used [by the 9th Judicial District Court] was inappropriate..." - and was finally able to ascertain with clear factual knowledge the particularized grand jury "irregularities" serving as the substance of Chavez's allegations against the District as well as

the New Mexico Supreme Court's findings on the matter. (App. K, 3).

In review of the Opinion, in concert with the antecedent newspaper articles (App. K 1 and 2), Amaro discerned that the sum and substance of the District's "custom" and predatory use of perverted "irregularities" in the grand jury selection process by persons who were prohibited from participating in the process/procedures not only violated due process and constituted reversible "plain" and/or "fundamental error" by directly affecting the structural framework and very foundation of each case in which the "custom" and forbidden techniques were applied or practiced, but also worked to erect a permanent ne plus ultra bar insuperably precluding the State from being able to acquire the requisite jurisdiction over either the subject matter or person(s) to be prosecuted as the mere fact and practice of the "custom" itself prevented grand juries from being "legally constituted," while the methods and techniques utilized by prosecutorial personnel to selectively dismiss or summon particular grand jurors "via ex parte communication with no involvement from the court" operated to strip 'Targets' of their right to fairly-composed and unbiased grand juries, in contravention to the demands of U.S.C.A, Constitutional Amendments V and XIV.

Innately aware that Defendants of cases in which application of the "custom" and/or utilization of the forbidden practices completely destroyed any notion of jurisdiction were explicitly entitled to relief as a matter of law (under the national Constitution's Due Process Clause and Equal Protection rights) regardless of the specific facts of any individual case or its history - especially where one person similarly situated to members of the class requested has already been granted relief against the 'newly' discovered "custom" and forbidden practice(s) - Amaro set upon what should have been an easy quest for relief on behalf of the entire class as the salient facts have already been litigated and the offending court's "failure to acquire jurisdiction" is a patently meritorious claim.

State Habeas Corpus Proceedings:

Relying on the self-policing profession's purportedly high "Ethics" standards to trigger a corrective process, Plaintiff/Petitioner Amaro submitted letters to (former) Governor Susana Martinez (a former "District Attorney" for Doña Ana County) and the New Mexico Attorney General with copies of the newspaper articles and DeLeon Opinion (App. K), drawing the State's top officials and highest "Prosecuting Attorney's" attention directly to the public corruption of the court's officers and wrongful imprisonment of persons convicted in the absence of the requisite jurisdiction.

With no reply from the State's erstwhile Governor and dispositive results from the Attorney General's Office (App. T), Amaro entered the legal arena on March 30, 2015 - approximately 8 months after receiving a copy of the DeLeon v. Hartley Opinion (App. K, 3) - with a "Class Action Petition For Writ Of Habeas Corpus" submitted to the offending State-court pursuant to NMRA Rule 5-802. Habeas Corpus. (App. Q)

Because of the State district court's history regarding habeas corpus petitions filed "pro se," Amaro, simultaneously, petitioned the New Mexico Supreme Court for a "Writ of Mandamus" to the State district court (April 3, 2015).

The State Supreme Court denied the Mandamus request (App. O) on May 13, 2015, with Mandate No. 35, 224.

Perfidiously abusing the power of his 'discretion' by unethically choosing to preside over the habeas case despite a disqualifying conflict of interest in that he - as a complicit-party to the "custom," and accessory to the prosecutors' use of forbidden Grand Jury-related practices against 'Targets' - had a personal stake in the outcome of the matter due to the nature of the case and its "Claims" (App. K), Judge Stephen Knowles Quinn spurned Amaro's attempt at relief and malevolently extended the degree of his judicial malfeasance by issuing an "Order Summarily Dismissing Petition For Writ Of Habeas Corpus" (April 16, 2015, App. P) in which the judge improperly substituted the issues of the actual "class action" habeas corpus petition with 13 grounds of 'automatic-reversal' errors (spanning 21 individual issues) impetuously drawn from a "Notice" filed by Amaro in his personal case (February 28, 2015, App. R) in order to evade the 'lack of jurisdiction' issue as well as the seven particularly specified "Grounds of Relief" (Intentional And Prejudicial Prosecutorial Misconduct; Judicial Misconduct; Judicial Bias; Fundamental Error; Ineffective Assistance of Counsel; Miscarriage of Justice; and, Selective And/Or Discriminatory Prosecution) (App. Q).

Within days of filing his "Order Summarily Dismissing Petition For Writ Of Habeas Corpus" (App. P) - a fraudulent document having no kinship with the actual 'judgment-specific' "Class Action Habeas Corpus" petition duly filed by Amaro (App. Q) - Judge Quinn announced a sudden intent to retire from the bench, cloaking his 'conscious of guilt' with a publicly stated desire to spend time with his wife, despite having gone through the trouble to get re-elected to the bench only five months earlier. (Oddly, Quinn would be gubernatorially replaced by "Matt" Chandler, the former "D.A." defending the District's "custom" and use of forbidden practices in the grand juror selection process identified in Appendix K)

As the summary dismissal had no appurtenance with the actual habeas corpus petition filed by Amaro, Amaro repeatedly sought to obtain resolution of the matter through the following pleadings:
1) a Letter of Inquiry to the Court Clerk, June 16, 2015;
2) a "Petition For Clarification Of Case Status", October 5, 2015;
3) a "Motion For Class Certification", March 9, 2016; returned as "unfiled";
4) the re-submission of the "Motion For Class Certification" with a formal "Request For Rulings, April 12, 2016; and,
5) a "Change of Venue" petition to the New Mexico Supreme Court, April 18, 2016.

Although the "Change of Venue" petition was never answered, it apparently set things in-motion as the matter was assigned to a State district court judge.

Following the consecutive recusals of two judges - "Matt" Chandler and Fred T. VanSoelen, respively (both of whom are former prosecutors for the District who participated in the "custom" and actively practiced the forbidden practices) - Judge Drew D. Tatum issued his "Order Denying Petitioner's Petition For Clarification Of Case Status And Order Denying Petitioner's Motion For Class Certification And Order Closing This Matter" (App. N) in which he continued to deny relief while simultaneously refraining from address the 'lack of jurisdiction' issue and indicating his own mistaken beliefs that: 1) habeas corpus actions are not 'civil' proceedings, but are merely a continuation of criminal proceedings (contrary to the Court's holdings as far back as 1963 where the Court held: "[H]abeas corpus [is] an original . . . civil remedy for the enforcement of the right to personal liberty . . ." in Fay v. Noia, 372 U.S. 391, 423-424, 83 S.Ct. 822, 9 L.Ed. 2d 837 (1963); and, 2) there is no such thing as a class action habeas'.

In essence, due to an ineffective corrective process in which "Class Action Habeas Corpus" was arrogantly not recognized as an accepted legal category, the State court incompetently failed to recognize the viability of a "Class Action Petition For Writ Of Habeas Corpus" (App. Q) as an available method or avenue of relief and, thus, summarily rejected Amaro's 'judgment-specific' claims (and corresponding relief) without ever performing the procedures duly prescribed by State law (NMRA Rule 5-802), and without reaching the underlying cause of action or resolving the petition's claims.
Likewise avoiding the 'lack of jurisdiction' issue, the New Mexico Supreme Court denied review of the matter with denial of Amaro's "Petition For Writ Of Certiorari", filed June 9, 2016, in their Mandate in Docket No. S-1-SC-35965, filed as "DENIED" on June 24, 2017 (App. M).

Federal Habeas Corpus Proceedings:

Advancing to the United States District Court (D-NM) with a true Habeas Rule 2(d) 'judgment-specific' 28 U.S.C. §2254 Petition For Writ Of Habeas Corpus, in concert with Fed. R. Civ. P. 23 and accompanied by initiatory Motions for: Appointment of Counsel; Plaintiff's "Show Cause" against New Mexico; Summary Judgment; and, Class Certification, on August 30, 2017 (August 28, 2017, by the "Mailbox Rule"). As with the State-court, the U.S. District Court itself mishandled the matter by failing to recognize a whole section of Habeas Law while skipping over the Legislature's 'curative' 2003 Amendments to Fed. R. Civ. P. 23 through TWO "dismissals" and an inaccurate denial of a "Motion For Reconsideration" (Apps. B, C, and D, respectively).

In "skipping over the Legislature's 2003 Amendments to Fed. R. Civ. P. 23," the district court invoked an outdated stare decisis-based ruling stemming from the obsolete case law of Fymbo v. State Farm Fire & Cas. Co., 213 F.3d 1320, 1321 (10th Cir. 2000) (quoting Orendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975)), which predates the 2003 Amendments and fails to give due and proper consideration to - or employ - the Rule's change to subdivision (c) and 'new addition' of subdivisions (g) and (h), which 'cure' the Rule of its previous (a)(4) issues of 'inadequate legal representation by a non-attorney' by making it a mandatory act for the court itself to appoint qualified counsel to the class upon certification, therein changing the basis of Rule 23(a)(4)'s pre-2003 Amendments' "Adequacy" requirements.

In the district court's FIRST summary dismissal of the matter, Judge Junell effectively reiterated the State-courts' misguided belief that 'there is no such thing as a class action habeas' despite a history of such proceedings dating back at least to the case of Wirlwording v. Swenson, 404 U.S. 249 (1971) (which got its start in 1966), and continuing through today, with refinements in the process, as habeas corpus practice and procedure is not limited to a narrow, formulistic set of rules or circumstances but is made available as a way for wrongfully convicted/imprisoned person to challenge the Constitutional validity of the judgment in his/her case.

Refraining from reaching or resolving the underlying 'lack of jurisdiction' issue, the court reverted to citing the outdated stare decisis-based ruling and its 'obsolete' case law to "dismiss all class action claims" while attempting to recast the atypical Habeas Rule 2(d) 'judgment-specific' class action habeas corpus suit into a 'regular' individual 'Petitioner-specific' habeas corpus action by, sua sponte, taking judicial notice of Amaro's personal "Capital Murder" State-court conviction and issuing to him an Order "to show cause why his own habeas petition should not be dismissed as untimely.... within 30 days" - in a "Capital Offense" case, without the aid of appointed counsel as mandated by 18 U.S.C. §3599(a), for indigent Petitioners. (App. B)

Caught by surprise and Court-Ordered to submit what is in fact and essence an individual 'Petitioner-specific' "Petition For Writ Of Habeas Corpus" within 30 days of the Court's Order without the aid of counsel - during the Christmas season - Amaro provided the court with a 43-page "Answer" on January 2, 2018 (Rec., Doc. 12), in which he stated an "Actual Innocence" gateway claim pursuant to McQuiggin v. Perkins, with introduction of 'new' tangible evidence bearing a strong "presumption of vindictiveness" and exposing "the prosecutor's" unjustifiable basis of prosecution against Amaro (App. L.), and supported by a large number of particular and specifically alleged claims that challenges not the "sufficiency of the evidence" but the complete lack of any evidence objectively tending to support his conviction on the charge of 1st Degree Murder, in addition to the State-court judge's own acknowledgment of 13 issues of 'automatic-reversal' constituting 21 grounds of relief (App. P), and including, but not limited to: prosecutor's coaching and subornation of perjured testimony from his "Star Witness"; prosecutor's deliberate introduction and use of perjured testimony before the Grand Jury; prosecutor's failure to correct false and/or inaccurate testimony; prosecutor's use of inadmissible and false evidence presented to the Grand Jury; the legal ineligibility of "the prosecutor" to hold public office and, thus, bring charges, due to "Moral Turpitude" (sued twice for sexual harassment, App. Z.); prosecutor's filing of false instruments where he filed the indictment against Amaro on May 1, 2001, as the Grand Jury was decidedly Not "legally constituted"; and where, essentially, drafted his "Star Witness's" Third written statement on May 8, 2001, to 'clean-up' 'discrepancies' between prior attestations and pathology reports - namely, that the scientifically identified "Murder weapon" was a knife belonging to the "Star Witness" and was not Amaro's, thereby impermissibly 'amending' the already invalid Bill of Indictment (established with App. V); numerous Brady violations where Amaro had been prejudicially deprived of virtually every shred of potentially exculpatory latent-print and DNA evidence (due to "oversight", "omission," and "error"); desecration of a corpse by Clovis Police Department personnel; staging/manufacture of prejudicial and excessively inflammatory "photographic evidence" by Clovis Police Dep't. personnel; unlawful use of OMI evidence markers by Clovis Police personnel; improper presence of Clovis Police personnel during autopsy of the decent; improper influence upon OMI personnel by Clovis Police; falsification of material fact(s) used in warrant applications (also by "custom"; App. U); perjury at trial by police personnel; and, an incomprehensible level of "Ineffective Assistance of Counsel" by State-Appointed counsel who couldn't even recognize the grounds of automatic-reversal acknowledged by Judge Quinn in his dismissal (App. P) or Motion the court for a "competency evaluation" that he told the court he needed to do (App. X, where the trial was actually delayed so Judge Quinn could go play his sax "with the band" in California).

-repeated on Direct Appeal where the Appellate Attorney alerted the Justices of the New Mexico Supreme Court to the claims of both "Malicious Prosecution" and "Vindictive Prosecution" (App. L) but did not 'argue' them and, instead, argued only four issues where trial counsel had stated five issues, with the strongest issues being omitted altogether (~~App. L~~), in a "Capital Offense" case brought in the absence of jurisdiction pursuant to the district court's "custom" and prosecutorial staff's utilization of forbidden grand juror selection practices, where the Defendant was convicted of a murder alleged to have taken place almost 12 full hours before the earliest possible "time of death" of the decedent, as scientifically deduced, under a 'new' theory neither presented to any Grand Jury nor even remotely possible given the expert testimony of the Forensic Pathologist. (Rec., Doc. 12)

At the same time, with the Court's Order providing a sense of finality to the 'judgment-specific' habeas through dismissal of all "class action" claims and the improper intent to re-cast the nature of the petition into an altogether different, individual 'Petitioner-specific' action (App. B), Amaro submitted a COA request, on January 4, 2018, with an offer to remit a second 5^{00} Filing Fee so as to formally separate the 'judgment-specific' petition from the Court-prompted, Order-initiated 'Petitioner-specific' habeas corpus action.

Although the U. S. District Court 'improvidently granted' the COA request regarding dismissal of the class action claims, the Court of Appeals denied jurisdiction and dismissed the appeal on the grounds that Amaro had been allowed to proceed (with habeas corpus action) individually (App. J; January 11, 2018).

In the district court's SECOND summary dismissal (App. C; May 24, 2018), Chief Judge M. Christina Armijo omitted Judge Junell's original assertion that "Even if §2254 afforded this type of relief - which it does not - " (App. B) but otherwise restated the outdated stare decisis-based ruling of the previous dismissal, premised on the obsolete - pre-2003 Amendments to Fed. R. Civ. P. 23 - case law of Fymbo v. State Farm Fire & Cas. Co., supra, and proceeded to summarily reject the "Actual Innocence" gateway claim as "untimely" despite the "Timeliness" arguments stated by Amaro in his show cause "Answer" (Rec. Doc. 12), improvidently overlooking App. L (Amaro's 'new' evidence) and erroneously holding:

> "... Mr. Amaro attempted to 'support [ ] his actual innocence claim' by addressing the 'legal sufficiency of his convictions'... Although he makes a number of disturbing allegations, all of them address the legal issues or are facts known at the time of trial. These allegations do no not establish Mr. Amaro's actual innocence."

(which further ignored the jurisdictional issue while clearly establishing a prima facie showing of ineffective assistance of counsel, and goes to give credence to the "vindictive prosecution"-based "Actual Innocence" claim).

In her Order, Chief Judge Armijo pre-denied Amaro's application for COA and further Ordered "all pending motions [I are DENIED as moot " (App. C), which preemptively applied to Amaro's Motions for: Appointment of Counsel; Order to Show Cause; Summary Judgment; and Class Certification. Chief Judge Armijo also proceeded to dismiss the Court-prompted, Order-initiated 'Petitioner-specific' claims - including the 'Actual Innocence" gateway claim introduced under McQuiggin v. Perkins, as "untimely" and with an apparent position that the claims, on their face, were insufficient to entitle Amaro either to a hearing or to his release.

Similarly, Amaro's "Motion For Reconsideration" (filed on June 17, 2018, under the "Mailbox" rule) failed to correct the district court's misapprehension of applicable Rules and/or Statutes despite clearly apprising the court to its missteps regarding: the court's failure to address the the underlying 'lack of jurisdiction' issues; mandatory appointment of counsel to a certified class, pursuant to Fed. R. Civ. P. 23(c) and (g); mandatory appointment of counsel to an indigent Petitioner in a "Capital Offense" case, pursuant to 18 U.S.C. §3599(a)(2)(2006); inapplicability of §2244(d)(1)'s "Time Limitations" where the grounds forming the factual predicate of a claim were not previously discoverable, or to a judgment-specific class action habeas corpus action; and, the particular propriety of Summary Judgment in this case as there are no genuine issues of material fact, while the "failure to acquire jurisdiction" claim is patently meritorious, pursuant to Fed. R. Civ. P. 56. Reconsideration was "DENIED" on March 28, 2019 (App. D).

Amaro subsequently appealed directly to the TENTH Circuit Court of Appeals for a COA, under Fed. R. App. 22, on April 11, 2019.

On April 16, 2019, the Court of Appeals issued an Order directing a limited remand to the District Court for reconsideration of a COA and a secondary Order to Amaro requiring him to "file a written report advising the court of the status of the district court proceedings on the earlier of: (1) May 16, 2019; or (2) five days after he receives notice of the district court's order regarding COA". (App. F)

On April 23, 2019, the District Court entered its decision with an "Order Granting In Forma Pauperis Application And Denying Certificate Of Appealability" (App. G), denying COA in manners contrary to §2253(c)'s specifications and in clear contempt of the 10th Circuit's Order where the district court denied COA stating:

"Based on the Notice of Appeal (Doc. 31), it does not appear Amaro seeks to appeal that Order. However, to the extent Amaro seeks an additional certificate of appealability, the request is denied. As the Court explained in the original dismissal opinion (Doc. 23, Amaro failed to make a substantial showing that he has been denied a constitutional right, or that reasonable jurists would differ as to any ruling"

apparently in reference to Appendix J, and while turning a blind-eye to the 'lack of jurisdiction' issue incontrovertibly established with the documents of Appendix K.

On April 26, 2019, Amaro submitted a "Petition For Writ Of Mandamus Upon The United States District Court, District of New Mexico", and, having also received a copy of the District Court's April 23, 2019 decision denying COA (App. G), began drafting his "Written Report Advising The Court Of The Status Of The District Court Proceedings Regarding COA" as Ordered by the Court of Appeals on April 16, 2019 (App. F), with an additional request for the "appoint[ment] of qualified legal counsel to the class requested pursuant to Fed. R. Civ. P. 23(g) and to Appellant, ..., pursuant to 18 U.S.C. § 3006A(c)(2006), 18 U.S.C. § 3599(a)(2)(2006) and/or under Habeas Rule 8(c)."

Despite Amaro's "Capital Offense" case classification — and resulting in great prejudice to his person — the 10th Circuit Court of Appeals denied his request for appointment of counsel stating: "The court will not consider the possibility of appointing counsel for the appellant until the case has been fully briefed and the court has had an opportunity to consider the appellant's own statement of his arguments on appeal," thereby causing great prejudice to Amaro to the detriment of his appeal, while denying to him his statutory right to the aid of appointed counsel as an indigent Petitioner in a "Capital Offense" case. (App. H).

On May 7, 2019, Counsel to the Clerk of the U.S. Court of Appeals, Ms. Lisa A. Lee, issued to Amaro a notice indicating that the Court of Appeals had lifted its April 24, 2019 abatement of the COA proceeding and relieved Amaro of his obligation to file a written report regarding the status of the district court's determination of COA. (App. I)

The Counsel's notice also informed Amaro that "the relief you seek in the mandamus submission appears to mirror the relief you seek through this proceeding. Accordingly, ... the panel of judges ... will not take any additional action regarding it." (App. I)

As directed by the Clerk of the Court of Appeals, and pursuant to Federal Rules of Appellate Procedure, Amaro submitted the "Combined Opening Brief And Application For A Certificate of

Appealability," dated March 30, 2019, in which he again expressed, essentially the same 'abuse of discretion-type' arguments he presented to the District Court in his "Motion For Reconsideration" (from June 17, 2018) with a specific request for the Court to address nine particular issues and also "review [the district court's] comprehensive summary dismissal and denial of all accompanying pleadings 'as moot' under abuse of discretion" (Rec.; 10th Cir. COA Brief, No. 19-2064).

On July 11, 2019 (App. A) the Court of Appeals issued its "Order Denying Certificate of Appealability" effectively restating the district court's holding and flatly declaring:

> "Because Mr. Amaro is proceeding pro se, he cannot adequately represent the interests of the putative class. Rule 23 thus forecloses him from bringing an action on the class's behalf. The district court held as much, and that holding is beyond debate."

The 10th Circuit also repeated the district court's application of 28 U.S.C. § 2244(d)(1), dismissing Amaro's individual claims "as untimely" based on the court's calculation of time dating from 2005, when Amaro's personal State-court conviction became "final," and not from the State-court's cessation of impediments preventing Amaro from perfecting a 'Petitioner-specific' habeas petition, nor from the approximate date of Amaro's access to the New Mexico Supreme Court Opinion denuding the facts of the District's "custom" (DeLeon v. Hartley; App. K, 3).

Disregarding Amaro's submission of Appendix L (the 'new' evidence), and misapprehending the nature of his "Actual Innocence" gateway claim, the court held:

> "Before the district court, Mr. Amaro attempted to "support [] his actual innocence claim" by addressing the "legal sufficiency of his convictions," but he offered no new evidence that was not "presented to the jury." R. at 314. Mr. Amaro does no better on appeal. Although he makes a number of disturbing allegations, all of them address the legal issues or are facts known at the time of trial. These allegations do not establish Mr. Amaro's actual innocence." (App. A),

where Amaro's "Actual Innocence" claim is actually premised on a "vindictive prosecution" claim on top of the claims for ", inter alia; judicial misconduct, prosecutorial misconduct, and ineffective assistance of counsel (Doc. 1, p. 9)" (App. B; omitting: Judicial Bias, Fundamental Error, Miscarriage of Justice, and Selective And/Or Discriminatory Prosecution; App. Q), under which he uses the inordinate number of 'errors' to both bolster the "vindictive prosecution" claim AND to establish the sheer ineffectiveness of his defense attorney in 'defending' him, especially where the attorney re-raised the "incompetency" issue originally stated by "the prosecuting attorney" during a hearing on May 8, 2001, and then neglected to follow-up with a timely Motion to have Amaro's competency professionally evaluated by psychiatric personnel before proceeding with the trial.

This holding, Appendix A, also perpetuates the Courts' failure to address the underlying "failure to acquire jurisdiction" claim premised upon the documents and facts of Appendix K.

In futility, Amaro vehemently argued against the determination in a mistitled "Motion For Rehearing" (construed as a "Petition For Rehearing" by the Court of Appeals), dated July 25, 2019, which the 10th Circuit quickly denied without comment, opinion, or overview, on August 1, 2019. (App. E)

In Sum:

Thus, based on a pattern of 'procedural' dismissals, the matter-at-hand has effectively suffered a total of eight formal, court-based denials of relief even though the action is based upon a patently meritorious "failure to acquire jurisdiction" claim against the 9th Judicial District Court of New Mexico and revolves around public corruption, abuse of office, moral turpitude, prosecutorial mis-con-duct, judicial misconduct, role malfeasance, breach of legal duty, abuse of power, abuse of discretion, lack of integrity, and desecration of Constitutional guarantees - with a consolidated effort (i.e., collusion and/or conspiracy) - with a stupidly obvious, wide-scale deprivation of Constitutional Rights that should have triggered a corrective process on its own. Contrary to law, common-justice, and common sense, the present imprisonment(s), restraint(s) upon liberty, and other negative consequences of "wrongful conviction(s)," stemming from the now-publicized "custom" and 'former' practices of New Mexico's 9th Judicial District Court (illegitimately spawned by the District's systemic ethics morass), have been injudiciously allowed to continue unabated against thousands of persons unabashedly deprived of due process and irreverently prosecuted outside the scope of law in the complete absence of jurisdiction (... denied relief solely because the Plaintiff/Petitioner in this case is a 'non-attorney').

There is neither excuse or defense by the State of New Mexico that could overcome the odious conduct of its agents, nor basis of law or fact for having brought and advanced such proceedings that is NOT frivolous or malicious, yet at no time has this case ever been afforded even the minimum process required or any opportunity to be heard despite the Plaintiff's Constitutional Right to: 1) challenge the validity of convictions and the propriety or legality of current custody; 2) Due Process Clause protections; and 3) Equal Protection of the Laws.

And it is only for the lower Federal Courts' sheer lack of vigilance, in regards to the Legislature's 'curative' Amendments to Fed. R. Civ. P. 23 - in 2003 - that this case has reached this point, as

is readily apparent from the 10th Circuit's final words on the summary dismissal of "all class action claims":

"One or more members of a class may sue... as representative parties on behalf of all members only if... the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). We have read this rule to exclude pro se class representatives: "A litigant may bring his own claims to federal court without counsel, but not the claims of others." Fymbo v. State Farm Fire & Cas. Co., 213 F. 3d 1320, 1321 (10th Cir. 2000). "This is so because the competence of a layman is 'clearly too limited to allow him to risk the rights of others.'" Id. (quoting Oxendine v. Williams, 509 F. 2d 1405, 1407 (4th Cir. 1975))... Rule 23 thus forecloses him [AMARO] from bringing action on the class's behalf. The district court held as much, and that holding is beyond debate." (App. A)

The first conflict concerns whether the Court of Appeals for the 10th Circuit prejudicially abused its discretion when it denied COA (App. A) and the Rehearing request (App. E; without opinion) seeking review of the District Court's summary dismissal of "all class action claims" based solely on the Petitioner's 'non-attorney' status with an outdated stare decisis-based procedural ruling derived from obsolete case law, in regards to pre-2003 'requirements' of Fed. R. Civ. P. 23(a)(4) which became no longer applicable given the Legislature's 2003 Amendments to Fed. R. Civ. P. 23 mandating the court itself to appoint qualified legal counsel to a certified class (R. 23(g)(1)(A)) where the intent of Congress was to ensure a class received adequate legal representation, not to restrict a class of persons from initiating class action proceedings.

The denial of both COA and the Rehearing request by the Court of Appeals comes in a very unusual judgment-specific class action habeas corpus case involving an inferior court's extreme misconduct and abuse of the Grand Jury process for 32/33 years, infecting thousands of cases with polluted proceedings (including several "Capital Offense" cases) in which the indictments were legally void ab initio as the tainted grand juries could not confer jurisdiction, where the district court summarily dismissed the matter with no review of the merits of the case or resolution of the underlying claims related to the State district court's action(s)/conduct or it's "failure to acquire jurisdiction".

The second conflict concerns the U.S. Constitution's Habeas Corpus Suspension Clause – Art. I, §9, cl. 2 – where the Court's holding abusively identifies a particularly described class of applicants who are oppressively restricted from even *initiating* class action suits in blatant

conflict with clearly established Federal laws pertaining to both "class action" suits under Fed. R. Civ. P. 23 and also to petitions seeking habeas corpus relief on behalf of persons deprived of their Federal Rights under the U.S. Constitution. (Apps. A, E, and K)

The third conflict concerns the true status of the case, whether the rulings of the lower federal courts are actually "null and void" as neither the court of appeals nor the district court fulfilled their respective judicial obligations to uphold the rule of law and/or apply fixed provisions of "Mandatory Statutes" to this case but posted-up with: **non**-compliance with modern standards of federal habeas corpus practice and procedure; **non**-performance of federal statutes requiring the court's appointment of counsel to a certified class in all class action suits pursuant to the Legislature's 2003 Amendments to Fed. R. Civ. P. 23; a **failure** to engage in the requisite "rigorous analysis" to determine if a class representative met the burden of the four prerequisites to maintaining a class action suit pursuant to Fed. R. Civ. P. 23; **non**-performance of federal statutes pertaining to the court's mandatory appointment of counsel to indigent habeas corpus petitioners in "Capital Offense" cases, available even before the filing of a federal habeas corpus petition - on request - pursuant to 28 U.S.C. §3599(a)(2)(2006); and, an **unreasonable** reliance upon an outdated stare decisis-based ruling premised on the 10th Circuit's **own obsolete** case law in order to state a summary dismissal on procedural grounds. It seems highly unlikely that Congress would support a rogue court's deliberate deviation from its legislative intent or that the U.S. Supreme Court, under Article III power, would - when faced by a habeas corpus ad subjiciendum - endorse or permit to stand the unreasonable judgments of inferior courts who irresponsibly perverted the rule of law with 'irregular' procedures and outdated procedural rulings.

(Note: defined by Black's Law Dictionary, "Mandatory Statute" is a generic term describing statutes which require and not merely permit a course of action. A "mandatory" provision in a statute is one the omission to follow which renders the proceedings to which it relates void.)

The fourth conflict concerns an abuse of discretion where the Court of Appeals affirmed the district court's summary dismissal of "all class action claims (App. A), where a non-waivable jurisdictional issue is the theme, on the ground that Amaro - as a 'non-attorney' "cannot adequately represent the interests of the putative class" (App. A) and is therefore "exclude[d]... from bringing an action on the class's behalf" (App. A), where the cause exists regardless of whether or not AMARO qualifies as a "proper plaintiff" to maintain a suit in which the court's appointment of qualified legal counsel to the class is a "mandatory act." At least one

U.S. District Court (Delaware) has held that the inability of a particular plaintiff to qualify as a proper party to maintain a class action suit does not detract from or diminish the existence of the cause of action and that the cause continues to exist "until a qualified Plaintiff can get it started in federal court" (Perrott v. United States Banking Corp., D. Del. 1944, 53 F. Supp. 953).

The fifth conflict concerns whether the class of post-conviction defendants in this case are duly entitled to "Due Process Clause" protection and/or "Equal Protection" relief from wrongful convictions adjudicated in the absence of jurisdiction, pursuant to the State's covert operation of a befouled "custom" and predatory utilization of strictly forbidden practices in place of the legislatively prescribed "Rules of Procedure" by the State's agents in fraudulently acquiring Grand Jury "Bills of Indictment" against 'Targets' of the Grand Jury in conjunction with an unconstitutional grand juror selection process which had been under the absolute control of prosecution personnel in the place and stead of a duly empowered State district court.

As the lack of jurisdiction arising from the State's **choice** to partake of the tree of forbidden practices cannot be overcome, it seems completely heretical for the federal courts to deny due and proper relief on irrelevant and inapplicable procedural grounds, especially where the New Mexico Supreme Court has already declared that the District's "custom" resulted in grand jury proceedings which were "illegal and unconstitutional" (App. K) and there can be no doubt that the New Mexico Supreme Court judgment declaring the "custom" and forbidden practices "illegal and unconstitutional" is binding on similar cases pursuant to the doctrines of issue preclusion and "Equal Protection." The New Mexico Supreme Court fully litigated the constitutional issues in DeLeon v. Hartley (App. K, 1) thus legally obligating successive courts to follow and apply the same declaratory judgment to the cases of each member of the class, as in the cases of Estelle v. Smith, 451 U.S. 454 (1981), and, Adams v. Texas, 488 U.S. 38 (1980) "each of which ruled unconstitutional a capital-sentencing practice utilized in Texas and occasioned grants of a number of petitioner-initiated summary judgment motions in cases which the record clearly established that the forbidden practice was followed."

The sixth conflict arises from the U.S. District Court's impromptu attempt to improperly convert the true Habeas Rule 2(d) 'judgment-specific' 28 U.S.C. §2254 Petition For Writ of Habeas Corpus **class action** suit into a categorically different 'Petitioner-specific' habeas corpus action pursuant to the court's erroneously-premised "dismiss[al] of all class action claims" and Order individually directing Plaintiff Amaro to "show cause why his own habeas

should not be dismissed as untimely" (App.B), and concerns whether the Court of Appeals abused its discretion in denying COA (App.A) and the Rehearing request (App.E) while failing to afford the person of Pedro J. Amaro any inkling of standard habeas corpus practice and procedure or one iota of a constitutionally adequate opportunity to be heard where, notwithstanding the courts' systemic failures to discern or recognize the separate functions, purpose, and scope of the two breeds of habeas corpus petitions at play here, it seems the district court flagrantly abused its discretion not so much in taking judicial notice of Amaro's personal State-court conviction, but in, first, requiring him to, essentially, submit an individual 'Petitioner-specific' petition for Writ of Habeas Corpus in a "Capital Offense" case "within 30 days" without the aid or assistance of counsel normally afforded to similarly situated "Petitioners" (App.B) — in what began as a 'judgment-specific' action - and, second, proceeding to summarily deny relief in a "Capital Offense" case in the absence of any opportunity to be heard, develop the facts for the Court, or litigate issues the Court of Appeals refers to as "disturbing allegations" (App.A), where such allegations include

(1) adjudication of the matter in the absence of jurisdiction;
(2) intentional and prejudicial prosecutorial misconduct;
(3) judicial misconduct and bias;
(4) selective prosecution;
(5) vindictive prosecution;
(6) perjury on the Witness Stand by police;
(7) subornation of perjury by the prosecutor;
(8) double jeopardy violations;
(9) Brady violations;
(10) ineffective assistance of counsel; and

a host of automatic-reversal-type errors already acknowledged by State District Court Judge Stephen K. Quinn in Appendix P.

REASONS FOR GRANTING THE PETITION

It is significant to note that, in light of DeLeon v. Hartley and the relevant news articles (App.K) and Appendix T, Respondent Attorney General for New Mexico is effectively estopped from arguing against the salient facts or propriety of relief based on the doctrines of issue preclusion and/or res judicata.

I. THIS CASE AFFECTS THOUSANDS OF "CONVICTED FELONS," INCLUDING THOSE IN SEVERAL "CAPITAL OFFENSE" CASES, WHERE AN UNPRECEDENTED 32-YEAR RUN OF PUBLIC CORRUPTION AND ABUSE OF THE JUDICIAL PROCESS INSUPERABLY BARRED THE STATE DISTRICT COURT FROM ACQUIRING JURISDICTION IN ITS GRAND JURY-BASED PROSECUTIONS.

Under "extreme and improbable" circumstances (Virginia in Cohens v. Virginia, 19 U.S. (6 Wheat) at 386-87, 404-05, see id. at 304-307 (argument of counsel)), an exercise of this Court's supervisory power is truly called for in this case by the Court of Appeals' denial of COA (App. A) and the subsequent Rehearing request (App. E) as its factors and extenuating circumstances inherently cause it to be of extraordinary public importance.

Intrinsically important as it necessarily involves and directly affects the "Convicted Felon" status of literally thousands of persons - including those in several "Capital Offense" cases - this case not only challenges thousands of convictions over a 32/33 year time-span, it also warrants special consideration as the Constitutional challenge to the validity of the convictions is predicated upon a State district court's prejudicial nonfeasance of judicial duties directly affecting the administration of justice, which was exponentially compounded through serious acts of prosecutorial misconduct where personnel of the District Attorney's Office predatorily abused the Grand Jury process by utilizing strictly forbidden practices to unfairly dismiss, select, and summon particular grand jurors for Grand Jury service, thereby assembling illegal and unconstitutional grand juries whose proceedings could not confer the requisite jurisdiction to the adjudicating court over either the subject matter or person(s) to be prosecuted.

II. THE DECISION BELOW RESTS ON CLEAR ERROR OF LAW AND SQUARELY PRESENTS MULTIPLE CONFLICTS.

A. The Decision's Conflict With Federal Rules of Civil Procedure 23:

Issuing from the court's interpretation of Fed. R. Civ. P. 23 (a)(4), the decision below is openly incongruent within itself and creates a conflict in the circuits over whether the sub-subdivision actually "... forecloses [non-attorney applicants] from bringing an action on the class's behalf" where the Court, in Appendix A, held:

"One or more members of a class may sue... as representative parties on behalf of all members only if... the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). We have read this rule to exclude pro se class representatives."

This holding, in itself, shows that Congress neither expressly nor impliedly intended to pre-empt the initiation of a class action proceeding by any particular class of peoples - such as "Pro Se Plaintiff/Petitioners" who are typically "Pro Se" only because they are unable to hire a licensed "professional" to "bring" the claims to Federal court due to their poverty.

Where the Court carried on in its holding with:

"A litigant may bring his own claims to federal court without counsel, but not the claims of others." *Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000)." This is so because the competence of a layman is 'clearly too limited to allow him to risk the rights of others.'" *Id.* (quoting *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975)... Rule 23 thus forecloses him from bringing an action on the class's behalf. The district court held as much, and that holding is beyond debate." (App. A),

the conflict stems, for lack of judicial vigilance, from the court's erroneous interpretation of Rule 23(a)(4) with an 'outdated' interpretation that seems to be more of a veiled exercise in "gatekeeping" than a legitimate misapprehension of the Legislature's precise language and plain terms.

This is especially true given the Legislature's 'curative' Amendments to Rule 23 in 2003, in contrast to the court's use of case law on the issue decided before Congress made it a mandatory act for the court itself to appoint qualified legal counsel to a class upon certification, further implicating the Rule's required "rigorous analysis."

Moreover, the court's decision not only disembowels Rule 23 by voiding the intent of the Supreme Court in proposing the Rule's "appointment of counsel" provision while stripping the Congressional intent of Rule 23(c), (g), and (h), but also comes in the absence of the "rigorous analysis" required by the very same Rule - Fed. R. Civ. P. 23. Contrary to the Rule, the lower courts, both, failed to discern whether Amaro's claims met the burdens of the four elements and/or whether the class would otherwise be 'certifiable' (Numerosity, Commonality, and Typicality), regardless of AMARO's "Adequacy".

Finally, initiation of a class action proceeding by an indigent Petitioner acting within "Time Limitations" to preserve his rights and/or right to relief without the beneficial aid of professionally licensed legal counsel does not invalidate the premise. In the present case - set in motion by public exposure of a State district court's 32/33-year operation of an illicit "custom" resulting in "illegal and "unconstitutional" grand juries - the acts of the 'defendants' challenged by Plaintiff affect all members of the plaintiff-class in substantially the same manner and give rise to violations of U.S.C.A. Const. Amends. V and XIV and statutory rights which are similar for all members of the plaintiff-class and, therefore, are typical within the meaning of

Rule 23(a)(3), which implicates the principle of the Court's holding in the case of Perrott v. United States Banking Corp., D. Del. 1944, 53 F. Supp. 953, where the Court articulated:

"It seems to me the rule does not go beyond procedure.... Simply because a particular plaintiff cannot qualify as a proper party to maintain such an action does not destroy or even whittle at the cause of action. The cause of action exists until a qualified plaintiff can get it started in federal court."

B. The Decision's Conflict With Title 28, United States Code, Sections 2242 And 2254, Habeas Rule 2(d), And Fed. R. Civ. P. 24:

The decision below is openly at war with the structure and intent of these statutes as the Court summarily dismissed all "class action claims" (App. A) with the holding that: "A litigant may bring his own claims to federal court without counsel, but not the claims of others," whereas these statutes explicitly provide just the opposite:

§2242: "Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf;" and,

§2254: "(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody in violation of the Constitution or laws, or treaties of the United States."

Habeas Rule 2(d) (1976 Adoption) "permits, but does not require, an attack in a single petition on judgments based upon separate indictment or on separate counts even though sentences were imposed on separate days by the same court." (1976 Adoption, Advisory Committee Notes to Rule 2 of the Rules Governing Section 2254 Cases), which leaves open the door to class action suits in which litigation is brought on behalf of others with no stipulation as to whom may "bring an action on the class's behalf."

Similarly, Fed. R. Civ. P. 24(b) has been held applicable to habeas corpus actions and concerns permissive intervention by "anyone ... (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim... and the main action have a question of law or fact in common."

Thus, misconstruing the language of Fed. R. Civ. P. 23 - pre-or post-2003 Amendments - to bar 'Next-friend' or 'fraternal benefit association' - type petitions seeking habeas corpus relief on behalf of those who can't do it for themselves or, perhaps, where a class action suit works to the court's benefit in terms of efficiency and judicial resources, is a leap of logic that is simply indefensible.

C. The Decision Is In Conflict With 28 U.S.C. § 2253(c) And The Principles Of The Court In Slack v. McDaniel:

The decision below, denying COA (App. A) and the Rehearing request (App. E), is in blatant conflict with the directives of §2253 in that, under this Statute's "floor requirement," COA does not require a showing that the appeal will succeed but, in fact, forbids it with the principles the Court announced in Slack v. McDaniel in 2000 where the Court held: "when a district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the district court was correct in its procedural ruling;" Slack v. McDaniel, 529 U.S. at 484, 478.

From the beginning, the courts have clearly recognized Amaro's intent to "vacate all [grand jury-based] criminal judgments entered in New Mexico's Ninth Judicial District Court between 1979 and 2012/2013. (Doc. 1, p. 1)... [which] 'are void for lack of jurisdiction' because they were 'procured by fraud'... (Doc. 1, p. 1)" (App. B), which unabashedly tells the tale that even the district court identified a "substantial showing of the denial of a constitutional right" with a particularly identified claim supported with specifically stated details, which fulfilled Slack's requirements of what must be pleaded by a Pro Se Petitioner (when 'liberally construed') in order to state a claim sufficient to trigger the court's fact-finding procedures - as if the supporting documents (App. K) did not obviously disclose the denial of a constitutional right as well as the right to relief, on their own.

III. THE DECISION BELOW UNJUSTIFIABLY DISCRIMINATES AGAINST THE CLASSES OF: "INDIGENT PETITIONERS" AND/OR "PRISONER PETITIONERS" WHO CANNOT AFFORD TO RETAIN THE SERVICES OF PROFESSIONALLY LICENSED LEGAL COUNSEL.

The 10th Circuit's explicit exclusion of pro se applicants from initiating an action on the behalf of a class based solely on the Petitioner's 'non-attorney' status, where the dynamics of all applicable Rules and Statutes expressly authorizes just the opposite, defies legal reasoning - even that of a 'layman'.

This holding, unreasonably singling-out "pro se" Petitioners, is the full equivalent of saying that The Law does not (equally) apply to either "the Poor," or "the Prisoner," and unjustly punishes persons of these classes for their indigency or status as a "convicted felon" (all prisoners are 'non-attorneys' by way of conviction regardless of any previous career one

might have had as an "attorney at law.").

Thus, the essence of this holding tacitly expresses that "justice is for sale" but only to those who can afford it. (through the hiring of professionally licenced legal counsel).

IV. THE DECISION BELOW REFLECTS AN UNJUST ENFORCEMENT AND PERPETUATION OF A GRAVE MISCARRIAGE OF JUSTICE.

The 10th Circuit's Order, effectively denying relief to a whole class of persons known to have been deprived of their 5th and 14th Amendment rights to equal protection and the due process of law (minus the one, App. K, 3), enforces the State district court's legally invalid judgments and perpetuates the wrongful infliction of punishments outside the scope of law as well as the consequences of the illegal convictions rendered by that court in the absence of jurisdiction.

The documentation of Appendix K provide clear proof that New Mexico's 9th Judicial District Court not only failed to apply proper procedure prescribed by law, but also defeated the due process demands of U.S.C.A, Const, Amends. V and XIV with a repugnant "custom" that collides head-on with Constitutional requirements.

In denying relief against claims derived from a case in which the New Mexico Supreme Court (has already) held that the prosecutors' conduct violated the prosecutor's duty of fairness and impartiality, and "interfered with the grand jury's statutory duty to make an independent inquiry into the evidence supporting a determination of probable cause" (App. K, 3), the Court of Appeals effectively side-steps its obligations to uphold and promote the Rule of Law and, instead, tacitly expresses its support for the results of the inferior court's flagrant misconduct and abuse of power, and thereby contributes to the wrongful imprisonment of persons in custody in clear violation of the Constitution or laws of the United States through a decision that demonstrates manipulation of law and not "sound discretion."

The 10th Circuit's position, in alignment with the district court's Opinion, standing hand-in-hand with the offending State district court's intent - to not capitulate to a prisoner no matter how wrong the court is - establishes an atmosphere of tribalism and solidarity, contrary to the Judges' responsibilities as a neutral entity, and its no wonder why the court's have all refrained from addressing the underlying Constitutional claims: to do so would mean holding the agents of just accountable for their actions in contravention to the rights of Due Process.

V. THE DECISION BELOW FAILS DUE PROCESS.

In light of the particular documents revealing the underlying facts of this action, no factual inquiry is necessary as to the existence of the State-court's "custom" or the District's

utilization of condemned conduct and forbidden practices in the assembling of the locale's grand juries by personnel of the District Attorney's Office via ex parte communication with no involvement from the court. (App. K)

As the Right to Due Process of Law is meant to promote fair and impartial proceedings and does not permit the agents of Prosecution to negate, disregard, or violate the Rules related to Rights of Due Process, it is unfathomable that the Court of Appeals has 'failed' to address the underlying jurisdictional issue at-play in this case as the "Due Process Clauses" of U.S.C.A. Const. Amends. V and XIV provide ironclad guarantees of certain rights including the right to be prosecuted in the manner prescribed by law.

While crime is a problem that has consequences and deserves punishment(s), Courts have recognized that the problem "cannot excuse the need for scrupulous adherence to our constitutional principles." Grady v. Corbin, 495 U.S. 508, 524 110 S.Ct. 2084, 2095, 109 L.Ed.2d 548 (1990).

This principle echoes the Court's sentiments in U.S. v. Mechanik, 106 S.Ct. 938 (1986) (Justice Marshal, dissenting) where Justice Marshall held:

> "The Court's rule that all grand jury misconduct becomes harmless after conviction, however, is especially pernicious... it is the majority's refusal to reverse convictions for demonstrated grand jury misconduct that imposes unacceptable costs. There are few limitations on the conduct of the prosecutor before the grand jury... Violations of even those isolated restrictions, in by far the majority of cases, will go undetected by defendants. The only way to allow even minimally effective enforcement of those rules is to reverse the convictions of defendants whose indictments were tainted by... violations"

which he said in regards to circumstances that pale in comparison to the grand jury violations in this case, in both nature and degree.

The Court's stance on the issue, that:

> "Due Process (a cornerstone of modern legal procedure) requires a recognition of the Defendant's Rights and holds the agents of justice accountable for any actions which might contravene those rights,"

seems to harken back, at least, to 1866, where the Supreme Court there held:

> "[I]t is the birthright of every American citizen when charged with a crime, to be tried and punished according to law. The power of punishment is alone through the means which the laws have provided for that purpose, and if they are ineffectual, there is an immunity from punishment, no matter how great the offender the individual may be, or how much his crimes may have shocked the sense of justice of the country, or endangered its safety.

By the protection of the law, human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamors of an excited people" (Ex parte Milligan, 71 U.S. (4 Wall.) 2, 118-19, 18L.Ed 281 (1866).

As due process requires that in order to subject a defendant to a judgment in personam, the action must not offend 'traditional notions of fair play and substantial justice', the 10th Circuit's decision fails due process by both, letting wrongful convictions and continuing punishments stand in the absence of jurisdiction (where they should have been reversed as a prophylactic means of deterring grand jury abuses in the future), and by failing to provide the "minimum process" to Amaro on the road to relief.

VI. THE DECISION BELOW VIOLATES EQUAL PROTECTION RIGHTS.

The 10th Circuit's ruling is in open conflict with the Rights of U.S.C.A. Const. Amend. XIV, where the Amendment provides "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws," as the Court of Appeals is clearly aware of the New Mexico Supreme Court's case of DeLeon v. Hartley (App.A), yet avoids Ordering the same or similar relief to Amaro and the proposed class, who are similarly situated to DeLeon through the District's application of its "custom" "since 1979" until 2012/2013.

According to legal reasoning, on equal protection, where one person is granted relief, all persons similarly situated are entitled to the same or equal relief.

Thus, in this case, the legally invalid "Bills of Indictment" MUST be quashed, and the 10th Circuit's side-stepping of this issue reflects an unreasonable determination in violation of the Rights of Equal Protection.

VII. THE CASE AT-HAND CONSTITUTES AN IMPORTANT PIECE IN A MOSAIC THAT IS NEEDED FOR GUIDANCE BY THE LOWER COURTS IN THE FIELD OF HABEAS CORPUS LAW.

Besides the facts of the case, the method of Amaro's constitutional challenge to the validity of convictions procured in the absence of jurisdiction - the "'seldom-used' Habeas Rule 2(d)-based 'judgment-specific' class action petition for Writ of Habeas Corpus" - remains an enigma to the vast majority of "legal professionals" and is, as such, the subject of pervasive confusion among lower courts.

As the record reflects, in Appendix N, Judge Tatum chastises Amaro for "attempting to file a class action civil law suit in his criminal case", and, similarly, in Appendix B, Judge Junell wrote "Even if §2254 afforded this type of relief - which it does not -", holdings

which show a lack of acquaintance with the laws of the land in so far as they apply to habeas corpus practice and procedure, which breeds the question: How can 'litigants' receive fair treatment when the 'referees' don't know the nuances of particular areas in the practice of law?

Habeas Law has its own set of Rules and the community of legal practitioners need to know about this 'tool', made aware that this particular avenue of relief is available in certain situations, under specific circumstances.

The Supreme Court's review of this matter could draw the attention of the legal community to the field of Habeas Law and to the existence of the "class action habeas" category of law, and, in doing so, prevent a needless repeat of what's taking place in this case.

and,

VIII. TO CORRECT THE "GRAVE MISCARRIAGE OF JUSTICE" THAT INCIPIENTLY SET THIS CASE IN MOTION.

As the convictions challenged by Amaro in his original habeas corpus petition cannot be squared with the demands of the United States Constitution and require reversal as the underlying indictments were returned by grand juries whose Constitutional function had been inappropriately tainted by and through the district attorneys' unlawful exercise of judicial power(s) and/or fraudulent use of authority statutorily delegated strictly to the district court, yet continue to stand due to an incontrovertibly ineffective corrective process, the Supreme Court's exercise of its supervisory powers is needed to correct the grave miscarriage of justice that not only set this case in motion but continues unabated with continuing terms of imprisonment and/or restraint(s) upon the liberty of persons convicted by the Ninth Judicial District Court of New Mexico in conjunction with the District's application of its illicit "custom" and dishonest utilization of forbidden practices - by prohibited persons - in the selection of the grand jurors.

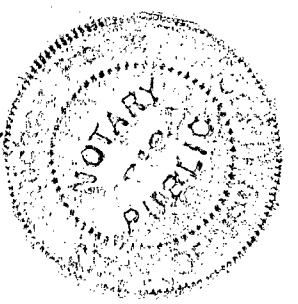
To the ends of justice, pursuant to the Supremacy Clause of Article III, this honorable Court has not only the jurisdiction but also the power to bring to an end the grave miscarriage of justice perpetrated by New Mexico's 9th Judicial District Court.

CONCLUSION

For the foregoing reasons, Petitioner AMARO prays that this Court grant to him and the requested class such additional relief and process as may be necessary and appropriate in the premises.

The petition for a writ of certiorari should be granted.

notary Michael Flatlick
EXPIRES 12-8-2020



Respectfully submitted,

Pedro J Amaro

Date: October 28, 2019

In compliance with 28 U.S.C. §1746, I, PEDRO J. AMARO, declare under penalty of perjury that I am filing this Petition by submission to the prison's internal mailing system by depositing the parcel into the "Legal Mail" box located in the facility library, First Class Postage prepaid, on October 29, 2019.

PJA