

19-7275

ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JAN 10 2020

OFFICE OF THE CLERK

CECIL BOYETT — PETITIONER
(Your Name)

VS.

DWAYNE SANTISTEVAN, et al. — RESPONDENT(S)
STATE OF NEW MEXICO

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRTEENTH JUDICIAL DISTRICT COURT - VALENCIA COUNTY, N.M.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CECIL BOYETT
(Your Name)

6900 W. MILLEN DR.
(Address)

HOBBS, NEW MEXICO 88244
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

I.

WHETHER PETITIONER BOYETT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY THE THIRTEENTH JUDICIAL DISTRICT COURT OF NEW MEXICO UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT? [SEE APPENDIX A]

II.

WHETHER THE STATE PROSECUTOR WITHHELD EXCULPATORY EVIDENCE AT PETITIONER BOYETT'S TRIAL IN VIOLATION OF THE RULES OF DISCOVERY AND DID THIS CONSTITUTE A BRADY VIOLATION BY DENYING DISCLOSURE UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT? [SEE APP. A.]

III.

WHETHER THE STATE PROSECUTOR'S INTERFERENCE WITH DEFENSE TEAM'S EXPERT WITNESS, DR. LORI MARTINEZ, CONSTITUTES PROSECUTORIAL MISCONDUCT, IN VIOLATION OF PETITIONER'S RIGHT TO A FAIR TRIAL UNDER THE COMPULSORY PROCESS CLAUSE OF THE SIXTH AMENDMENT? [SEE APPENDIX A.]

IV.

WHETHER THE STATE DISTRICT JUDGE PRESIDING OVER PETITIONER BOYETT'S STATE HABEAS PROCEEDING ABUSED HIS AUTHORITY OR DISCRETION BY REFUSING TO RECUSE HIMSELF FOR GOOD CAUSE. [SEE APPENDIX A APPENDIX B, APPENDIX C AND RECORD A.]

V.

WHETHER THE TRIAL JURY WAS DEPRIVED OF EVIDENCE REGARDING DEFENDANT'S INABILITY TO FORM SPECIFIC INTENT; SCIENTIFIC EVIDENCE IN FAVOR OF THE SELF-DEFENSE CLAIM; AND PROPER JURY INSTRUCTIONS BASED ON ALL EVIDENCE RELATED TO THE SHOOTING, INCLUDING VICTIM'S HISTORY? [SEE APPENDIX A]

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:

RELATED CASES

- STATE V. BOYETT, D.C.T. NO. D-1314-CR-2004-00065, JURY VERDICT 12-12-05
- STATE V. BOYETT, NMSC NO. 2008-NMSC-030, 144 N.M., OPINION 04-28-2008
- BOYETT V. NEW MEXICO, D.C.T. NO. 1314-CR-2004-00065 PETITION FOR WRIT OF HABEAS CORPUS (FILED 10-31-08) EVID. HEARING APRIL 2016, JUDGEMENT 06-30-16
- NEW MEXICO V. BOYETT, NMSC NO. 29,730, PETITION FOR WRIT OF CERTIORARI, REVIEW DENIED AUG. 01, 2016.
- BOYETT V. SMITH, et al, U.S. DIST. CT. NO. 2:17-CV-00374-KG-CG, JUDGEMENT ENTERED MARCH 30, 2018,
- BOYETT V. SMITH, et. al., U.S. CT. OF APPEALS-TENTH CIRCUIT, JUDGEMENT 01-09-19, No. 18-2107
- BOYETT V. DWAYNE SANTISTEVAN, et. al, U.S. SUPREME COURT NO. 18-7774, PETITION FOR WRIT OF CERTIORARI, REVIEW DENIED, REHEARING DENIED, APRIL 15, 2019.
- BOYETT V. SANTISTEVAN, et al., NM DIST. CT. NO. D-1314-CR-2004-00065, PETITION FOR WRIT OF HABEAS CORPUS, DENIED NOV. 7, 2019.
- BOYETT V. SANTISTEVAN, et. al., NMSC NO. S-1-SC-38032, REVIEW DENIED 12-09-2019

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BRADY V. MARYLAND, 397 U.S. 742, 750 (1970)	APP. A, 11, 29, 19, 24
CRANE V. KY., 476 U.S. 683, 691 (1986)	APP. A, 44
SÃO PAULO V. AM. TOBACCO CO., 533 U.S. 229, 233 (2002)	APP. A, 27
SAWYER V. SMITH, 497 U.S. 227, 242 (1990)	APP. A, 11
STRICKLER V. GREENE, 527 U.S. 263, 281-82 (1999)	APP. A, 40
LONE V. BELL, 556 U.S. 449, 469 (2009)	APP. A, 40
AKE V. OKLA., 470 U.S. 68, 82-83, 105 S. CT. 1087, 1096 84 L. ED. 53, 66 (1985)	APP. A, 41
CASTILLE V. PEOPLES, 489 U.S. 346, 350 (1989)	APP. A, 6

STATUTES AND RULES

RULE 10 (c) U.S. SUPREME COURT RULES	5
28 U.S.C. SECTION 2254 (b)(3)	APP. A, 5
28 U.S.C. SECTION 2254	5 APP. A, 22
CAGE RULE	APP. A, 11
CRAWFORD RULE	APP. A, 11
NMRA, VOL. I, RULE 5-802	4.1, 5, 5.1, APP. A, REC. C
NMRA, VOL. I, RULE 1-000.1 (F)	APP. A, 27
NMRA, VOL. II, RULE 16-308 (A)(F)	APP. A, PG. 5-2

OTHER

U.S. CONSTITUTION, ARTICLE I, SECTION 9	3
U.S. CONSTITUTION, ARTICLE III, SECTION 2	3, 5
U.S. CONSTITUTION, ARTICLE IV, SECTION 2	3

TABLE OF AUTHORITIES CITED - CONT'D.

<u>CASES</u>	<u>PAGE NUMBER</u>
U.S. V. LOPEZ, 818 F.3d 125, 132 (3d Cir. 2006)	5.2
U.S. V. PASHA, 797 F.3d 1122, 1138-39 (D.C. Cir. 2015)	5.2
U.S. V. SIDDIQI, 959 F.2d 1167, 1173-74 (2d Cir. 1992)	5.2, APP.A, 29
U.S. V. GREENSPAN, (10TH CIR. 1994)	5.3
NICHOLS V. ALLEY, (10TH CIR. 1995)	5.3
U.S. V. ARUNACHALAM, 812 F.3d 290, 292 (3d Cir. 2016)	5.3
U.S. V. BLOOMER, 150 F.3d 146, 149 (2d Cir. 1998)	5.3
MONTEZ V. MCKINNA, 208 F.3d 862, 866 (10TH CIR. 2000)	APP.A, 2
STRICKLAND V. WASHINGTON, 466 U.S. 668, 698 (1984)	APP.A, 5, 7
CHAPMAN V. CALIFORNIA, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed 2d 705, 711 (1967)	APP.A, 42
U.S. V. KIEFFER, 681 F.3d 1143, 1157 (10TH CIR. 2012)	APP.A, 45
<u>RULES</u>	
NMRA, VOL. III, RULE 21-100	APP.A, 3
NMRA, VOL. III, RULE 21-200(B)	APP.A, 4 OF 5, 1 OF 2
NMRA, VOL. III, RULE 21-300	APP.A, 4
NMRA, VOL. III, RULE 21-400(A)	APP.A, 2 OF 2
NMSA (1978) CHAPTER 30	APP.A
<u>OTHER</u>	
U.S. CONSTITUTION, AMENDMENT V, VI, AND XIV	3, APP.A, 3
UNIVERSAL DECLARATION OF HUMAN RIGHTS, ARTICLE 8	3
N.M. JUDICIAL STANDARDS COMMISSION COMPLAINT	RECORD A

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-4.1
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A DECISION OF N.M. STATE TRIAL COURT - PROCEDURAL ORDER
DATED NOV. 07, 2019, NO. D-1314-CR-2004-00065.

APPENDIX B DECISION OF STATE SUPREME COURT DENYING REVIEW - ORDER
DATED DEC. 09, 2019 NO. S-1-SC-38032

INDEX TO RECORDS

RECORD A MOTION FOR ORDER OF RECUSAL AND SUPPORTING DOCUMENTS
N.M. DIST. CT. NO. D-1314-CR-2004-00065

RECORD B ATTACHMENT BRIEF TO PETITION FOR WRIT OF CERTIORARI, NMSC NO.
S-1-SC-38032

RECORD C NOTICE OF 5-802 (H) (1) PRE-APPOINTMENT REVIEW, N.M. DIST. CT.
NO. D-1314-CR-2004-00065, FILED AUG. 22, 2019.

RECORD D PETITION FOR WRIT OF CERTIORARI, NO. 18-7774, "STATEMENT OF THE CASE",
[PAGES 16-22 OF 34]

RECORD E SUPPLEMENTAL BRIEF ON PETITION FOR WRIT OF CERTIORARI,
U.S. SUPREME COURT, NO. 18-7774.

RECORD F PETITION FOR REHEARING, U.S. SUPREME COURT, NO. 18-7774,
AND DENIAL OF REHEARING.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 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 _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

☐ For cases from federal courts:

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

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was 12-09-2019.
A copy of that decision appears at Appendix B.

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE UNITED STATES CONSTITUTION, ARTICLE I, SECTION 9 PROVIDES:

"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."

THE U.S. CONSTITUTION, ARTICLE III, SECTION 2 PROVIDES THAT:

"THE SUPREME COURT SHALL HAVE APPELLATE JURISDICTION, BOTH AS TO LAW AND FACT, WITH SUCH EXCEPTIONS, AND UNDER SUCH REGULATIONS AS THE CONGRESS SHALL MAKE."

THE U.S. CONSTITUTION, ARTICLE IV, SECTION 2, PROVIDES:

"THE CITIZENS OF EACH STATE SHALL BE ENTITLED TO ALL PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES."

THE U.S. CONSTITUTION, AMENDMENT V, PROVIDES THAT:

"NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW;"

THE U.S. CONSTITUTION, AMENDMENT VI, PROVIDES THAT:

"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY TRIAL BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED ... AND TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."

THE U.S. CONSTITUTION, AMENDMENT XIV, SECTION I PROVIDES THAT:

"NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH ABRIDGES THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (EST. DEC. 10, 1948), ART. 8 STATES:

"EVERYONE HAS THE RIGHT TO AN EFFECTIVE REMEDY BY THE COMPETENT NATIONAL TRIBUNALS FOR ACTS VIOLATING THE FUNDAMENTAL RIGHTS GRANTED HIM BY THE CONSTITUTION OR BY LAWS."

STATEMENT OF THE CASE

PETITIONER BOYETT WAS CHARGED IN THE THIRTEENTH JUDICIAL DISTRICT COURT FOR VALENCIA COUNTY, NEW MEXICO WITH THE FIRST DEGREE MURDER OF DEBRA ROACH. AFTER A FIVE (5) DAY TRIAL, THE JURY FOUND PETITIONER BOYETT GUILTY AS CHARGED AND SENTENCED HIM TO AN AUTOMATIC MANDATORY THIRTY (30) YEAR LIFE SENTENCE. STATE V. BOYETT, D.N.M.-D-1314-CR-2004-00065. PETITIONER BOYETT REJECTED THE STATE PROSECUTOR'S PLEA OFFER OF SECOND DEGREE MURDER PRIOR TO TRIAL THAT WOULD HAVE RESULTED IN A FIFTEEN YEAR SENTENCE RELEASING PETITIONER ON PAROLE IN NOVEMBER 2016. [SEE RECORD D-"STATEMENT OF THE CASE"- PAGES 16-22 OF 34]

PETITIONER BOYETT FILED A PRO SE PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE UNITED STATES, NO. 18-7774 AFTER RELIEF WAS DENIED BY THE U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT, NO. 18-2107. THE U.S. SUPREME COURT DENIED REVIEW AND DENIED THE PETITION FOR REHEARING.

PETITIONER BOYETT THEN RETURNED TO NEW MEXICO STATE DISTRICT COURT, FILING A PETITION FOR WRIT OF HABEAS CORPUS ON NEW AN "UNEXHAUSTED" CLAIMS IN THE THIRTEENTH JUDICIAL DISTRICT COURT. SOME UNEXHAUSTED CLAIMS WERE PREVIOUSLY VOLUNTARILY DISMISSED BY PETITIONER IN U.S. DISTRICT COURT ON RECOMMENDATIONS BY THE U.S. MAGISTRATE DUE TO A FINDING THAT THE FEDERAL HABEAS PETITION WAS "MIXED."

THIRTY-FOUR (34) ISSUES AND CLAIMS WERE IDENTIFIED - BY

STATEMENT OF THE CASE, CONT'D.

THE LAW OFFICES OF THE PUBLIC DEFENDER FOR THE STATE OF NEW MEXICO OR L.O.P.D. DURING THEIR CONTROVERSIAL AND HIGHLY OBJECTED TO "NOTICE OF 5-802(H)(1) PRE-APPOINTMENT REVIEW" FILE DATED AUGUST 22, 2019. [SEE RECORD C].

PETITIONER BOYETT SHOWED CLEARLY SUFFICIENT GROUNDS AND PROPERLY OBJECTED TO DISTRICT JUDGE JAMES L. SANCHEZ CONTINUED PARTICIPATION REGARDING PRESIDING OVER HIS CASE, AND DID FILE TIMELY MOTIONS TO RECUSE JUDGE JAMES L. SANCHEZ ON THE GROUNDS OF JUDICIAL BIAS AND JUDICIAL MISCONDUCT. JUDGE JAMES L. SANCHEZ REFUSED TO RECUSE HIMSELF OR ANSWER PETITIONER'S MOTION FOR ORDER OF RECUSAL, OR ANY OTHER MOTIONS FILED, AND SUBSEQUENTLY DISMISSED PETITIONER BOYETT'S PETITION APPROXIMATELY TWO WEEKS AFTER PETITIONER FILED A JUDICIAL STANDARDS COMMISSION COMPLAINT AGAINST HIM, GIVING THE APPEARANCE OF IMPROPRIETY IN THE FORM OF RETALIATION. THE JUDGE'S DISMISSAL EXCLUDED A RATIONAL OR MEANINGFUL OPINION REGARDING ANY FINDINGS RELATED TO THE CONSTITUTIONAL VIOLATIONS RAISED. THE NEW MEXICO SUPREME COURT DENIED PETITIONER'S REQUEST FOR HELP TO COMPEL JUDGE JAMES L. SANCHEZ'S RECUSAL AND DENIED A PETITION FOR WRIT OF MANDAMUS. AFTER PETITIONER'S STATE 5-802 HABEAS PETITION WAS DISMISSED, THE NEW MEXICO SUPREME COURT DENIED REVIEW ON A PETITION FOR WRIT OF CERTIORARI. PETITIONER BOYETT NOW SEEKS THIS COURT'S REVIEW OF THE STATE TRIAL COURT'S FINDINGS FOR CLAIMS OF CONSTITUTIONAL VIOLATIONS. [SEE APPENDIX A].

REASONS FOR GRANTING THE PETITION

PETITIONER BOYETT CONTENDS HE IS ENTITLED TO RELIEF PURSUANT TO THE U.S. CONSTITUTION, ARTICLE III, SECTION 2 WHICH GIVES THIS COURT JURISDICTION AND AUTHORITY TO REVIEW THE STATE COURT'S FINDINGS OF LAW AND FACT, AND UNDER RULE 10(C) BECAUSE THE STATE COURT OF LAST RESORT IN NEW MEXICO, THE NEW MEXICO SUPREME COURT, HAS DENIED REVIEW OF PETITIONER'S STATE DISTRICT COURT PETITION FOR WRIT OF HABEAS CORPUS, AND THE STATE DISTRICT COURT WRONGFULLY ALLEGED PETITIONER WAIVED THE CLAIMS STATED THEREIN.

IMPORTANT QUESTIONS OF FEDERAL LAW SPECIFICALLY RAISED IN PETITIONER BOYETT'S STATE 5-802 PETITION FOR WRIT OF HABEAS CORPUS, INVOLVING CONSTITUTIONAL RIGHTS DURING PETITIONER'S STATE JURY TRIAL, WITH SPECIFIC CLAIMS OF SUBSTANTIVE DUE PROCESS AND PROCEDURAL DUE PROCESS VIOLATIONS WERE NOT ADDRESSED PRECISELY OR ADEQUATELY ACKNOWLEDGED BY THE STATE DISTRICT COURT OR THE NEW MEXICO SUPREME COURT.

PERTINENT QUESTIONS OF SPECIFIC PORTIONS OF THE RECORD OR SUMMARY THEREOF, SHOWING THE FEDERAL QUESTIONS WERE TIMELY AND PROPERLY RAISED IN THE FIRST INSTANCE AND IN SUBSEQUENT APPELLATE PLEADINGS INCLUDING PETITIONER'S 28 U.S.C. SECTION 2254 FEDERAL HABEAS FILED IN U.S. DISTRICT COURT, WHICH "RECOMMENDED" HE VOLUNTARILY DISMISS THE "UNEXHAUSTED" CLAIMS AND RETURN TO STATE COURT TO ADJUDICATE OR EXHAUST THE MERITS OF THE CLAIMS. PETITIONER

REASONS FOR GRANTING THE PETITION CONT'D.

COMPLIED WITH THE FEDERAL COURT'S RECOMMENDATIONS AND ADVANCED ONLY THE EXHAUSTED CLAIMS, EVENTUALLY BEING DENIED BY THIS COURT. PURSUANT TO THE FEDERAL COURT'S RECOMMENDATIONS, PETITIONER BOYETT RETURNED TO STATE DISTRICT COURT WHERE HE FULFILLED HIS OBLIGATIONS TO SHOW HE MET THE STANDARDS, UNDER STATE AND FEDERAL LAW, FOR BURDEN OF PROOF, ESTABLISHING BEYOND A REASONABLE DOUBT THAT HIS CLAIM OF DUE PROCESS VIOLATIONS DID FACTUALLY OCCUR DURING HIS JULY TRIAL, AND HIS APRIL 2011 EVIDENTIARY HEARING. THE COURT OF LAST RESORT, THE NEW MEXICO SUPREME COURT DENIED REVIEW OF PETITIONER'S JULY 09, 2019 PETITION FOR WRIT OF HABEAS CORPUS AND FLATLY DENIED HIS PETITION FOR WRIT OF CERTIORARI.

PETITIONER BOYETT RESPECTFULLY SEEKS THIS COURT'S DE NOVO REVIEW FOR THE PURPOSE OF DETERMINING WHETHER THE MERITS OF THE CLAIMS STATED THEREIN, AS WELL AS ANY OTHER CLAIMS THIS HONORABLE COURT COULD GLEAN BY AN OBJECTIVE REVIEW. THE CONSTITUTIONAL ISSUES STATED IN PETITIONER'S STATE 5-802 PETITION ARE COMPELLING REASONS FOR THIS COURT TO GRANT HIS PETITION BECAUSE THE STATE 5-802 PETITION SHOWS MATERIAL EVIDENCE OF AN EXONERATING AND EXCULPATORY NATURE WAS, IN FACT, WITHHELD BY THE PROSECUTOR, AND THE STATE PROSECUTOR ALSO INTENTIONALLY REFUSED TO COMPLY WITH DISCLOSURE OF PROPERLY REQUESTED DISCOVERY.

IN ADDITION TO THE REASONS STATED ABOVE, PETITIONER BOYETT RESPECTFULLY DIRECTS THE COURT'S ATTENTION TO RECORD D, "REASONS FOR GRANTING THE PETITION", PAGES 23-34 OF 34, U.S. SUPREME COURT

REASONS FOR GRANTING THE PETITION CONT'D.

NO. 18-7774; AND TO APPENDIX A.

THE RULE OF LAW SAYS IF THE INTEREST OF JUSTICE SO REQUIRES, A NEW TRIAL MUST BE GRANTED WHEN THE GOVERNMENT'S VIOLATION OF DEFENDANT'S DUE PROCESS RIGHTS UNDERMINED FAIRNESS, INTEGRITY, AND REPUTATION OF JUDICIAL PROCEEDINGS. U.S. V. LOPEZ, 818 F.3d 125, 132 (3d Cir 2006); AND ANOTHER COMPELLING REASON TO ORDER A NEW TRIAL IN PETITIONER BOUETT'S PARTICULAR CASE IS BECAUSE OF COMPARABLE CIRCUMSTANCES DESCRIBED IN U.S. V. PASHA, 797 F.3d 1122, 1138-39 (D.C. Cir. 2015) WHERE THE COURT ORDERED A NEW TRIAL BECAUSE THE GOVERNMENT FAILED TO TIMELY TURN OVER EXCULPATORY EVIDENCE THAT HAD AN INJURIOUS AND PREJUDICIAL EFFECT ON THE JURY BECAUSE THE WEIGHT OF EVIDENCE PRESENTED AT PETITIONER'S TRIAL EXCLUDED SUBSTANTIAL EVIDENCE FAVORING THE DEFENSE, AND WOULD PROBABLY HELPED CONVINCE AN IMPARTIAL JURY TO OBJECTIVELY COME TO A CONCLUSION OR DETERMINATION THAT REASONABLE DOUBT EXISTED. IN PETITIONER'S CASE, THE EXCLUSION OF EVIDENCE FAVORING THE DEFENSE WAS DETRIMENTAL BECAUSE PETITIONER-DEFENDANT BOUETT'S "CONVICTION APPARENTLY RESTED ON JURY'S DISBELIEF OF DEFENDANT." SEE U.S. V. SIDDIQI, 959 F.2d 1167, 1173-74 (2d Cir. 1992).

THE SUPREME COURT OF THE UNITED STATES HAS THE POWER, AUTHORITY, AND JURISDICTION TO ISSUE THE WRIT REQUESTED TO ENSURE SUBSTANTIAL JUSTICE, AND IN PETITIONER BOUETT'S PARTICULAR CASE, THERE ARE CLEAR AND INDISPUTABLE REASONS TO GRANT HIS PETITION BASED ON EXTRAORDINARY

REASONS FOR GRANTING THE PETITION CONT'D.

CIRCUMSTANCES THAT WARRANT THIS COURT'S REMEDY. WITHOUT THIS COURT'S INTERVENTION, THE RISK OF IRREPARABLE DAMAGE TO PETITIONER'S CONSTITUTIONAL RIGHTS WILL BE PERMANENT, AS PETITIONER BOYETT NOW EXHAUSTS HIS LAST KNOWN REMEDY.

DUE PROCESS REQUIRES THAT A JUDGE POSSESS NEITHER ACTUAL NOR APPARENT BIAS. THE THIRTEENTH JUDICIAL DISTRICT JUDGE, JAMES L. SANCHEZ, DEMONSTRATED PARTIALITY AND BIAS OVERTLY AT PETITIONER'S APRIL 2016 EVIDENTIARY HEARING. PETITIONER FILED MULTIPLE PLEADINGS IN AN ATTEMPT TO RECUSE THIS JUDGE FROM RULING OR PRESIDING OVER THE PETITION FOR WRIT OF HABEAS CORPUS. [SEE APPENDIX A AND RECORD A]

IN ADDITION TO THE NEW MEXICO STATE CASE LAW CITATIONS IN PETITIONER'S STATE 5-802 HABEAS PETITION, NUMEROUS CIRCUIT COURTS NATIONWIDE HAVE STATED VARIOUS COMPELLING REASONS THAT REQUIRE RECUSAL OF A JUDGE. NEW MEXICO'S CIRCUIT COURT OF APPEALS REQUIRES A JUDGE'S RECUSAL FOR BIAS OR PREJUDICE. U.S. V. GREENSPAN, (10TH CIR. 1994); AND FOR ABUSE OF DISCRETION. NICHOLS V. ALLEY, 71 F.3d 347, 350 (10TH CIR. 1995) (PER CURIAM). PETITIONER BOYETT FILED A PETITION FOR WRIT OF MANDAMUS, ASKING THE NEW MEXICO SUPREME COURT TO COMPEL A RESPONSE TO HIS MOTION FOR ORDER OF RECUSAL. THE NMSC DENIED THE MANDAMUS, CONTRARY TO U.S. V. ARUNACHALAM, 812 F.3d 290, 292 (3d CIR. 2016). AND THE CASE OF U.S. V. BLOOMER, 150 F.3d 146, 149 (2d CIR. 1998) SAID IT WAS ABUSE OF DISCRETION WHEN A JUDGE REFUSES TO RESPOND TO

PROPERLY PRESENTED MOTION OF RECUSAL.

PETITIONER BOYETT ASSERTS HIS CONSTITUTIONAL RIGHTS WERE NOT PROTECTED, AND THE STATE'S EXPLOITATION OF FABRICATED FANTASY FORENSICS, WILD ACCUSATIONS ABOUT PETITIONER, WITHHOLDING EXCULPATORY EVIDENCE, AND EXPLOITING PETITIONER'S LACK OF LEGAL KNOWLEDGE AND UNDERSTANDING, PREVENTED AND DENIED PETITIONER A FAIR TRIAL, CONTRARY TO THE U.S. CONSTITUTION AND SPECIFIED AMENDMENTS PREVIOUSLY STATED, AND THIS CAUSED THE JURY TO WRONGLY CONVICT HIM OF FIRST DEGREE MURDER, WHEN THE FACT REMAINS HE SHOT A DANGEROUS AND THREATENING PERSON IN SELF-DEFENSE.

CONCLUSION.

CECIL BOYETT
CECIL BOYETT, PETITIONER PRO SE
NIMCD No. 64272
6900 W. MILLEN DR.
HOBBS, N.M. 88244

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cecil Bayett

Date: JANUARY 7, 2020

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

CECIL BOYETT - PETITIONER

VS.

DWAYNE SANTISTEVAN, WARDEN, et. al. - RESPONDENT(S)

DECLARATION OF COMPLIANCE

I, CECIL BOYETT, PETITIONER PRO SE, HEREBY DECLARE AND CERTIFY
THE FOREGOING PETITION FOR A WRIT OF CERTIORARI IS COMPLIANT PURSUANT
TO RULE 33 (b) AND DOES NOT EXCEED THE FORTY (40) PAGE LIMITATION,
AND IS COMPLIANT WITH THE WORD LIMITATION PURSUANT TO RULE 33 (g)(i),
EXCLUDING EXEMPTED PARTS UNDER RULE 33.1(d), AND DO SO UNDER THE
PENALTY OF PERJURY UNDER UNITED STATES LAW, AND I HEREBY CERTIFY AND
SWEAR THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
AND UNDERSTANDING, AND THAT I AM IN COMPLIANCE WITH 28 U.S.C. SECTION 1746.

SIGNED: Cecil Boyett
CECIL BOYETT
PETITIONER PRO SE
NMED # 64272
6900 W. MILLEN DR,
HOBBS, N.M. 88244
NO PHONE, NO EMAIL

DATED: JANUARY 7, 2020

DECLARATION