

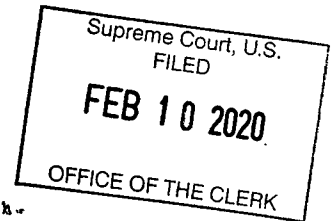
19-7683

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



In re, _____ — PETITIONER — m.b.
(Your Name) — m.b.

~~vs.~~ m.b.

Marlon Blacher — RESPONDENT(S) — m.b.

ON PETITION FOR A WRIT OF CERTIORARI TO

"IN THE SUPREME COURT OF CALIFORNIA"
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marlon Blacher
(Your Name)

c/o post office box 5002
(Address)

Calipatria, the State of California "92233" — 9498
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Is it not true that summary denial (without issuance of an order to show cause/evidentiary hearing) of a petition for a writ of habeas corpus wherein the presented facts include: Marlon Blacher, hereinafter "Petitioner", is arbitrarily deprived of default judgment; Petitioner is deprived of resentencing outside the bounds of the stipulations set by the statute upon which such resentencing rests; Petitioner is deprived of the right to appeal set by said statute; the courts arbitrarily decline to file and hear cases/causas brought by the Petitioner, and the other unjust circumstances detailed by said petition (See APPENDIX C 3-13.); is inappropriate, unjust and deprive the Petitioner of due process of law?
2. Is it not true that the aforesaid presented facts (see id.) warrants issuance of an order to show cause/evidentiary hearing?
3. Is it not true that the aforesaid presented facts (see id.) evidence/evinces that release/resentencing is due to the Petitioner?
4. Is it not true that the orders at issue here (see APPENDIX A & B.), which issue from courts that neither Cal.'s Const., nor any positively enacted statute of the state mention are null/void, as a matter of positive law, and, therefore, not lawfully binding upon/enforceable against the Petitioner.
5. Is it not true that where courts of the state unjustifiably fail to file/hear cases/causas brought by the Petitioner then no actual and valid means of recourse and remedy are available, at the state level, to the Petitioner and therefore federal common-law/other remedy is due to the Petitioner?

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:
- STATE OF CALIFORNIA;
 - CDCR;
 - W.L. Montgomery, warden.

RELATED CASES

- In re Marlon Blacher on Habeas Corpus, brought to be heard before the Constitutionally mentioned Supreme Court (cal.) but is taken to be heard before "IN THE SUPREME COURT OF CALIFORNIA" (APPENDIX A.), referenced by no. 525 7780. (see APPENDIX A § C 1.)
- Marlon Blacher v. "THE PEOPLE OF THE STATE OF CALIFORNIA", brought to be heard before the Constitutionally mentioned superior court, county of Contra Costa (see APPENDIX C 38) but is taken to be heard before "Superior Court of the State of California In and For the County of Contra Costa" (APPENDIX B.), referenced by no. 5-080631-5. (see id.)

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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 "Superior" _____ 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.

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 Jan. 02, 2020. A copy of that decision appears at Appendix _____.

☐ 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), and 1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

a) Constitution provisions :

- Arts. I § 10 cl. 1 and 3 ;
- Art. III § 2 cl. 1 ;
- Art. IV § 3 cl. 1 ;
- Art. VI cl. 2 ;
- Amendments I, VI, VIII, IX, XII, XIV § 1.
- Declaration of Rights (In Congress, at Philadelphia, October 14, 1774.)
- The Declaration of Independence (Adopted in Congress July 4, 1776)

b) Statutory Provisions :

- Title 18, United States Code, sections 241, 242, 2331, 1581.
- Title 28, United States Code, sections 1251 (b) (3), 1257, 1651, 1652, 1657, 1746.
- Title 42, United States, Code sections 1981, 1982, 1985(3), 1986, 1994.

c) Treaties :

- American Convention on Human Rights "PACT OF SAN JOSE COSTA RICA" ;
- Kellogg-Briand Pact ;
- Law of the Hague ;
- Lieber Code ;
- neutrality law ;
- Universal Declaration of Human Rights ;
- Vienna Convention .

STATEMENT OF THE CASE

Marlon Blacher, hereinafter "Petitioner", is one living, sentient, neutral man who on the 6th day of December, 1976, is free-born on the portion of "the land" (Article VI, clause 2, Constitution of the United States,) where the Union state referenced "Illinois" is located and the Petitioner is not, nor has ever been, a resident of the State of California / STATE OF CALIFORNIA. STATE OF CALIFORNIA, which is clearly something different than "the State of California" (Volume 9, Statutes at Large, page 452.) admitted into the Union by act of Congress (See id.), presently act (vi et armis) to deprive the Petitioner, without the Petitioner's consent, of enjoyment of the Petitioner's life, liberty, safety, happiness, and privacy based on judgment de facto, entered by a fiction/fraud court of said STATE OF CALIFORNIA, and whereby the record of the action from whence said judgment de facto stem clearly reflect: the party that bring said action is not "beneficially interested" (People ex rel. Dept. of Conservation v. El Dorado County, 36 Cal. 4th 971, 986.) re said action but bring said action for collusive purpose(s); nor is said party that named by statute to bring said action; said fiction/fraud court relieve said prosecuting party from the burden of proving malice aforethought to the jury beyond a reasonable doubt notwithstanding that said party specifically and expressly allege said malice aforethought by the information document it bring said action based upon, and malice aforethought is irrefutably an element of the Penal Code that said party complain that the Petitioner violate, whereby despite the plain absence of proof of said included element said court unduly enter judgment to convict but such circumstances clearly evince absence of valid subject-matter and venue jurisdiction, therefore, said judgment is null and void ab initio and the aforesaid depriving the Petitioner of life, liberty, safety, happiness, and privacy transpire outside the bounds of due process of law. Again, the aforesaid STATE OF CALIFORNIA, that impose (vi et armis) the aforesaid deprivations upon the Petitioner, is not one and the same as the State of California (See Volume 9, Statutes at Large, page 452.) but it is some color of new state unduly formed or erected within some neo-admiralty/maritime jurisdiction of said the State of California (See id.) and such formed or erected without the consent of the actual/de jure legislature of said the State of California

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(See *id.*), nor the consent of Congress, which conflict with the matters established by Article IV § 3 clause 1 Constitution of the United States.

The aforesaid STATE OF CALIFORNIA use its CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, hereinafter "CDCR", to facilitate the aforesaid deprivations it impose upon the Petitioner, whereby CDCR is premised upon some jurisdiction *de facto* that is in continuing insurgency to the Constitution of the United States and the laws made in pursuance thereof, as well as Cal.'s Const., and said STATE OF CALIFORNIA / CDCR continuously impose such jurisdiction *de facto* upon the Petitioner, a National of the United States of America, by allowing its staffing persons to perpetrate continuing conspiracy against the rights of the Petitioner (See United States v. King, 587 F.2d 209; United States v. Dried Fruit Assoc. 4 F.R.D. 1; and Title 18, United States Code, sections ^{241 and 242} ~~1481 and 1482~~) with unduly extended impunity to such perpetrators. Several incidents evidence the aforesaid continuing conspiracy against the rights of the Petitioner, including: the perpetration of a street gang manner of group physical attack upon the Petitioner, that include placement of an illegal chokehold (See e.g. Cal. Code Regs. tit. 15 § 32.68 (c) (3).) upon the Petitioner (See Blacher v. Villamarin, et al., Complaint, the United States District Court for the central district of California.); the perpetration of a street gang manner of group attack upon the Petitioner causing the Petitioner physical injury and false imprisonment (See Blacher v. Talley, et al., *id.*); boasting that Petitioner has no rights and no power while the persons that staff CDCR "have all the rights and the power"; then further brag that said staffing persons get to go home everyday while the Petitioner "stay stuck [in prison] surrounded by green" (Blacher v. Dieball, et al., *id.*); the unlawful abridgement of the Petitioner's religion exercise (See Blacher v. Wilcox, et al., *id.*; and Blacher v. Valenzuela, et al., *id.*); the habitual imposition of unconstitutional searches upon the Petitioner perpetrated to a manner that plainly violate even CDCR's own formally adopted regulations on the matter (See Blacher v. Johnson, et al., the United States District Court for the eastern district of California), which evidences the continuing illegitimacy infecting CDCR / STATE OF CALIFORNIA

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aforesaid taxing the Petitioner's life, liberty, safety, happiness, and privacy. The aforesaid STATE OF CALIFORNIA and CDCR are both unable and unwilling to hold its staffing persons inside the bounds of matters established by positive law and CDCR's own formally adopted regulations, and due to such continuing lawless violence is clearly incompetent to establish and maintain any lawful confinement of the Petitioner.

Further, subsequent to perpetration of theft, assault/battery, crimes against the Petitioner the Perpetrator CCPA person then generally abuse CDCR's RVR process by willfully and maliciously presenting false/fraudulent information regarding said crimes in order to cover-up their own guilt and ensure an undue guilty finding, which include various forms of arbitrary punishments that diminish prison level rights/privileges, is imposed upon the Petitioner, and it is by such undue circumstances that the Petitioner has been transferred up from a "Level III" prison to the more restrictive "Level IV", which said RVR process abuse is a main tactic for CDCR staffing persons to inhibit/oppose rehabilitation and on a selective/discriminatory basis that is mostly directed toward those perceived as "jailhouse lawyers". Additionally, the only drinking water that STATE OF CALIFORNIA/CDCR presently make accessible to the Petitioner has a taste, smell, and color very noticeably different than that of such water rendered at CDCR prisons such as CSP-L.A. County, CSP-SOLANO, and HIGH DESERT STATE PRISON, whereby the taste of said present drinking water can be best described as like drinking from a pond, of which because of the kidney disease which the Petitioner presently suffer, which is noted in CDCR files, such lack of access to safe drinking water not only violate Cal.'s Safe Drinking Water Act but also create actual/imminent threat to the health/safety/well-being of the Petitioner. All of the aforesaid incidents of the continuing conspiracy against rights that CDCR staffing persons perpetrate against the Petitioner transpire under circumstances where said staffing persons intentionally, knowingly, willfully, and maliciously violate matters established by positive law with full assurance that impunity will be extended.

The aforesaid continuous subjecting the Petitioner to a jurisdiction de

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Facto foreign to the Constitution of the United States and the laws made in pursuance thereof is indicative that STATE OF CALIFORNIA engage war against the neutral Petitioner who is a National of the United States of America and is at peace with United States, yet said STATE OF CALIFORNIA obtain monetary considerations from United States to engage said war against the neutral Petitioner which call into question the matters cited by Title 22, United States Code, sections 441-457, must constitute some manner of treason, and clearly violate treaties made under authority of the United States, such as: Geneva Convention, Kellogg-Briand Pact; Law of the Hague; Lieber Code; neutrality law; and Universal Declaration of Human Rights. There are more than one elements from its normal operations which evidence that it is, in fact, war that CDCR/STATE OF CALIFORNIA engage against the neutral and civilian Petitioner.

For instance, on the flag pole(s) at every CDCR prison (that has been used by the aforesaid STATE OF CALIFORNIA to execute its arbitrary deprivations of the Petitioner's life, liberty, safety, happiness, and privacy) three (3) flags are mastad: ¹⁾ the flag of United States; ²⁾ the flag of California Republic; ³⁾ the Prisoners of War flag, and at certain of such prisons (e.g. "CSP- (MC LEAST)") said prisoners of war flag is unlawfully placed at the most elevated position of the three, which by consideration of "law of the flag"

(Black's Law Dictionary 966 (am. ed.); see also McCulloch v. Sociedad de Marineros de Honduras 372 U.S. 10 (1963).) it is evident that said deprivations include the unlawful engagement of war against the neutral and civilian Petitioner. To facilitate the aforesaid war, that is unduly engaged against the Petitioner, STATE OF CALIFORNIA enter into agreement/alliance/compact/confederation/treaty with an association of persons whom callusively form a power, that is foreign to the State of California (see Volume 9, id.), and is named CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION, hereinafter "CCPOA", whereby said CCPOA persons are the mercenaries, re said unlawful war scheme, whom carry-on the day-to-day tasks in said war and to which

STATEMENT OF THE CASE

STATE OF CALIFORNIA has affected to render (de facto) said CCPDA persons independent of and superior to the democratically and constitutionally established civil power regarding their CDCR related activities; said CCPDA persons wear beige/brown boots of similar manner/fashion/type as those worn by members of U.S. Armed Services during the war known as "Desert Storm", along with military type flak vest (in some instances equipped with several visible grenade type devices), and are equipped with assault rifles (presently referenced throughout the main stream media as weapons of war) and projectile launchers which said CCPDA persons wield menacingly/threateningly clearly to intimidate/coerce the civilian, neutral, peaceful unarmed Petitioner and whereby the Petitioner has gone more than ten (10) continuous years without perpetration of a breach of the peace or crime such state sponsored show of force/threat of violence is clearly unjustifiable.

Pursuant to the aforesaid unlawful warfare enterprise, that STATE OF CALIFORNIA engage against the Petitioner the Petitioner is arbitrarily and continuously deprived of access to the constitutionally structured and organized courts of the State of California (Volume 9, id.), in part, by extending the powers of admiralty courts beyond their ancient limits, including; authorizing the judges' certificate to indemnify the prosecutor from damages, that he or she might otherwise be liable to; making the judges dependant on the will of associations, such as CCPDA, for appointment in office and continuation therein; continuing obstruction of the administration of justice by erecting fraud/fiction courts, that Cal.'s Constitution and the laws made in pursuance thereof do not express any jurisdiction for, to take jurisdiction de facto, over the cases/causes brought by the Petitioner to be heard before said constitutionally structured and organized courts, for the purpose of denying the Petitioner due recourse/remedy while pretending to extend such recourse to the Petitioner. Acts perpetrated by means of the aforesaid arbitrary imposition of fraud/fiction courts range

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from declining to file and hear the cases/causes brought by the Petitioner, to depriving the Petitioner of the statutorily stipulated hearing and assistance of counsel, and depriving the Petitioner of the statutorily stipulated right to appeal, which such undue deprivations create questions regarding the matters established by Amendment I and XIV of Constitution of the United States, made applicable pursuant to the matters cited by Title 42, United States Code, sections 1981 and 1982.

For instance, on or about the 2nd day of January, 2014, the Petitioner served, by means of substituted service, the pleadings necessary to bring a petition for resentencing in accordance with the matters cited by The Penal Code § 1170.95 (See APPENDIX C @ EXHIBIT "B" therein.) and for a time exceeding sixty (60) days subsequent to such service the Petitioner does not obtain receipt of any reply/response from the recipients of said pleadings (See id. at 38.), whereby The Penal Code § 1170.95(c) stipulate a time for the responding party to enter reply/response to said pleadings, which such time is within sixty (60) days of said substituted service, and due to the unreasonable failure of said responding party to satisfy said response time the Petitioner peaceably move for entry of default against said responding party. (See id. @ EXHIBIT "C" therein.) Instead of entering the aforesaid default, as law requires (See Crouch v. H.L. Miller & Co. (1915) 169 Cal. 341; Kennitt v. Caulfield (Cal. Aug. 27, 1903), 140 Cal. 34; Ingram v. Bob Toffe Co. 139 Cal. App. 2d 193; People v. De Carillo (1868) 35 Cal. 37; Robinson v. Early 248 Cal. App. 2d 19; and Wilson v. Cleveland (Cal. July 1, 1886) 30 Cal. 192.), some capital letter court that is not prescribed jurisdiction by Constitution (See Cal. Const. Art. VI §§ 1 and 4.) and that the Petitioner did not bring the aforesaid pleadings to be heard before (See APPENDIX C @ EXHIBIT "B" therein), enter an order, that is but an answer entered on behalf of the aforesaid responding party, summarily denying said pleadings (See APPENDIX B.) notwithstanding that the pertinent portion of the aforesaid Penal Code § 1170.95 stipulate that a court is to review said pleadings for a prima facie showing (See The Penal Code. § 1170.95(c).) and that counsel

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is to be appointed when requested; as the Petitioner request such.

The aforesaid Penal Code § 1170.95(c) stipulate:

"The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the Petitioner has requested counsel, the court shall appoint counsel to [advocate on behalf of] petitioner."

In light of the aforesaid pleadings brought by the Petitioner (See APPENDIX C @ EXHIBIT "B" therein.) it is evident that the court unduly go beyond the aforesaid determination of whether a prima facie showing has been made, and there is no excusing the court's undue failure to appoint counsel to the Petitioner but surely the matters established by Amendment VI Constitution of the United States, made applicable by the matters cited by Title 42, United States Code, sections 1981 and 1982, are brought into question by said undue failure. It is settled that a statute creating new right or prescribing new remedy, as the statute cited by the aforesaid Penal Code § 1170.95, is to be strictly construed (See Benbough Mortuary v. Bernal, 16 Cal. 2d 811.) and construction should be given that will not deprive interested person of substantial right (See Estate of Jacob, 100 Cal. App. 2d 452.) but because the aforesaid court that summarily deny the Petitioner's resentencing pleadings is but one of multiple instruments used to engage the aforesaid war against the neutral, civilian, Petitioner it willfully and maliciously act to insurgency of said principles when considering said pleadings.

On or about the 7th day of April, 2019, the Petitioner execute substituted service of Petitioner's objection to the aforesaid order summarily denying the Petitioner's aforesaid resentencing pleadings (See APPENDIX C @ EXHIBIT "F" therein.), along with notice of appeal regarding said order (See id.) and the aforesaid Capital letter Court enter denial of said objection (See id. @ EXHIBIT "G" therein.) while completely disregarding said notice of appeal, and therefore deny the Petitioner the right to appeal on the matter. Responding to such arbitrary non-response to the aforesaid notice of appeal the Petitioner present inquiry notice and petition for remedy to such arbitrary non-response (See id. @ EXHIBIT "H" therein.) but the court completely disregard said notice and petition,

STATEMENT OF THE CASE

which evidence the de facto capacity which said court act.

The aforesaid failing to file the Petitioner's notice of appeal, and inquiry notice and petition, is very disturbingly not the only instances where the state's courts have arbitrarily declined to file and hear matters brought by the Petitioner to be heard, which create questions regarding the matters established by Amendment 1, made applicable by the matters cited by Title 42, United States Code, Sections 1981 and 1982. For instance, when the Petitioner bring application for resentencing in accordance with 2014 Cal. Voters' initiative known as Proposition 47 it go unlawfully unfiled and unheard by the aforesaid summary denial order entering court for more than two (2) years and it is not until the Petitioner bring a petition for a writ of mandate, to be heard before the court of appeal, to compel said summary denial order entering court to file and hear said resentencing application, whereby the court of appeal request the superior court to present briefing on the matter of such undue failure to file and hear said application, and only then did said summary denial order entering court file said resentencing application, declining to present said briefing. (See APPENDIX C EXHIBIT "I" therein.)

Another instance of unjust refusal to file and hear matters brought by the Petitioner is the action to cancel written instruments (see id. @ EXHIBIT "J" therein) whereby subsequent to execution of substituted service of said action to cancel written instruments the Petitioner never receive any reply from the superior court regarding such and in response to such undue failure to file and hear said action the Petitioner bring a writ of mandate (See id. 1-12.) to compel the superior court to

STATEMENT OF THE CASE

file and hear said action to cancel written instruments but the court of appeal, before which the Petitioner bring said writ of mandate to be heard, join such conspiracy against the Petitioner's right to petition the government for a redress of grievances by unduly failing to file and hear said writ of mandate. Petitioner also bring a Complaint for declaratory relief to be heard before the aforesaid superior court (See id. @ EXHIBIT "K" therein), which said superior court also unduly fail to file and hear, and the Petitioner bring motion to recall the remittitur to be heard before the court of appeal (See id. @ EXHIBIT "L" therein), whereby the court of appeal arbitrarily decline to file and hear said motion to recall the remittitur.

Such declining to file and hear the aforesaid cases/causes brought by the Petitioner amount to plain abridgement of the Petitioner's right to petition the government for a redress of grievances, which call into question the matters established by Amendment I, IX, and XIV Const. of the United States, made applicable by Title 42, United States Code, sections 1981 and 1982, and evidences that no actual and valid means of recourse and remedy is available at the state level, to the Petitioner. It is unclear what bias or other unlawful motive by which the aforesaid courts act to abridge the Petitioner's right to petition the government for a redress of grievances and to due process of law but the affect/effect of such undue abridgement is to aid and abet the continuance of the aforesaid unjust war STATE OF CALIFORNIA engage against the neutral, civilian, Petitioner who is a National of the United States of America; has never been formally/officially declared an enemy by UNITED STATES nor STATE OF CALIFORNIA,

STATEMENT OF THE CASE

no express declaration/proclamation of such war has issued, and the incidents flowing from such war include arbitrary imposition, upon the Petitioner, of: slavery/peonage; torture and other cruel, inhuman or degrading treatment/punishment; genocide; enforced disappearance/hostage taking, which all conflict with "the supreme law" (Article VI, clause 2, Constitution of the United States). The aforesaid war transpire notwithstanding that the Petitioner presents the Petitioner's Bill of Peace (see APPENDIX C @ EXHIBIT "B", 26-32, therein), to which the recipients of said Bill of Peace, whom are all STATE OF CALIFORNIA and UNITED STATES staffing persons decline to accept said Bill of Peace and therefore admit to the engagement of war, i.e., the aforesaid unjust war engaged against the Petitioner.

It is written: "Wherefore by their fruits ye shall know them" (Matthew 7:20), and the fruits borne of STATE OF CALIFORNIA/CDJR/CCPBA, as illustrated by the foregoing matters, is corruption, retaliation, intimidation, coercion, not lawful custody, nor rehabilitation, and such illegitimately imposed circumstances transpire pursuant to the aforesaid unlawful war engaged against the neutral, civilian Petitioner while on "the land" (Article VI, clause 2, Const. of the United States) and in time of peace. The Petitioner has presented multiple notices, to persons acting in capacity as Cal. Gov. and Cal. Attorney General, regarding the aforesaid CDR/CCPBA persons perpetrated domestic terrorism but said Gov. and Attorney General office persons, whom are charged with the duty to see that the law is faithfully executed and to see that the laws of the State are uniformly and adequately enforced, respectively, usually respond with conscious disregard/deliberate indifference to said notices, which evinces that said domestic terrorism is

STATEMENT OF THE CASE

by design and supported by the multiple branches operative under
STATE OF CALIFORNIA.

The aforesaid order summarily denying the Petitioner's application for resentencing (See APPENDIX "B") itself evidence the undue bias against the Petitioner and in favor of the prosecuting party by which the court act, whereby at its "Procedural background" (Id. 3-4.) said court arrange the facts to a pro-prosecution manner while omitting many of the pertinent portions of such facts that are not favorable toward such prosecution. For instance, the aforesaid court assert, "On December 12, 2008, a jury found defendant guilty of first degree murder and guilty on all other counts" (Id. at 3.) but omit that the instructions it give the jury involve advising the jury that if it finds guilt on either the robbery or burglary charge the murder automatically attaches, irrespective of malice aforethought, and that proof of such malice is not necessary to find the Petitioner guilty of murder, notwithstanding that such malice is irrefutably an included element of the specific code that the prosecuting party allege in the action, i.e. The Penal Code § 187. The record of the underlying action at issue here clearly reflect the aforesaid conviction of first degree murder rests not on finding of guilt on the included element malice aforethought but on guilty findings of the elements in robbery and burglary, i.e. said malice aforethought element is conclusively presumed from findings on the elements of robbery and burglary, which such findings on the robbery elements do not rest on substantial evidence whereby it is settled that there are two (a) aggravating factors required to elevate a theft to a robbery: (1) force or fear applied to the victim of the theft, and (2) the

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property must be taken from the victim or his/her immediate presence (See People v. Gomez (2002) 43 Cal. 4th 249, 255.), and such force or fear must be used against a person who has a possessory interest in the stolen property in order to transform the theft into a robbery (See People v. Jenkins (2001) 140 Cal. App. 4th 805, 811.). and where the aforesaid record clearly reflect that no physical contact, whatsoever, between the Petitioner and the store employees transpire until Edmunds runs into the Petitioner to tackle the Petitioner to the ground, during which the stolen merchandise dislodges from the Petitioner's hand; then Cantu (the other store employee) join in the effort of tackling the Petitioner to the ground and after the Petitioner is pinned on the ground, under the weight of both of said store employees, did the Petitioner (who told Edmunds and Cantu of the Petitioner's inability to breathe at that point) pinch and scratch at Edmunds and Cantu. A guilty finding on robbery against Turner, a store employee that the aforesaid record clearly reflect that the Petitioner did not make any physical contact at all with, is entered re the underlying action at issue here, which evinces the lack of credibility with the aforesaid findings.

The court further assert, "[t]he assault on Cruz occurred during perpetration of a robbery within the meaning of section 189" (APPENDIX B 3.) but said section 189 is not cited on any of the charging and holding documents (see e.g. APPENDIX C EXHIBIT "A" therein.), it is section 187 (see *id.*), therefore, said section 189 cannot lawfully be made applicable to the action at issue here and the aforesaid record, of the underlying action here, clearly reflect that fear is not even an issue; regarding any persons having a possessory interest

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In the stolen merchandise, but even at the point of any arguable force being applied by the Petitioner to any possessory interest person transpire subsequent to the Petitioner's fatal blow with the Petitioner's hand, to Cruz and the case precedent is settled that when robbery intent is formed/complete after the killing has happened then felony-murder is inapplicable. (See e.g., People v. Jeter (1964) 60 Cal. 2d 671.)

The aforesaid court assert second degree murder implications re the action at issue here (see APPENDIX B 4.) but the case precedent pertinent here is clear that a single blow with one's hand (which is the circumstances re said action) does not evidence neither express, nor implied, malice and while it may be dangerous to safety it is not generally dangerous to life (See e.g., People v. Munn (1984) 165 Cal. 2d 1113; People v. Spring (1984) 153 Cal. App. 3d 1199, 1205-1206; People v. Teixeira 136 Cal. App. 2d 136, 150; and 1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000), Crimes Against the Person, § 201, pp. 812-813.) and, in fact, in multiple instances during pre-trial proceedings the person that appear as the prosecuting party, re said underlying action, admit that the facts of said underlying action do not, in and of themselves, evidence any malice aforethought and that the felony-murder rule's exception to proving such malice aforethought is the only means by which any murder implications can be introduced into said underlying action.

Regarding SB 1437 the aforesaid court assert:

"Section 1(c) of SB 1437 explains:

"It is necessary to amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life."

"(Emphasis added)" (APPENDIX B 5.)

The aforesaid sentencing court admit that the felony-murder rule and the natural and probable consequences doctrine is related to the murder conviction.

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re the sentence at issue here, and the record of the underlying action reflect that all parties to such action agree that the Petitioner did not act with intent to kill, and the aforesaid recitation of SB1437 shows that SB1437 is enacted to ensure that murder liability is not imposed on three different categories: 1) those who are not the actual killer; 2) those who did not act with intent to kill; or 3) those who was not a major participant in the underlying felony (See SB1437 (L))., whereby said three categories have the "or" conjunction, not "and", and because said record clearly reflect that the Petitioner is of the 2nd category then murder liability should not be imposed, resentencing is due to the Petitioner, and the court abuse its discretion / exceed jurisdiction by summarily denying the Petitioner's application for resentencing in accordance with SB1437.

The aforesaid sentencing court assert: "The record in this case is clear that any reasonable trier of fact, properly instructed under the current law, would reach a guilty verdict on a charge first degree murder" (APPENDIX B 8); and "... the court concludes defendant could be convicted of first degree murder under the new provisions of Penal Code § 189 (a), (e)" (Id.), which the Petitioner contest such conclusion as unjust / unreasonable based on the following. To begin with, the aforesaid sentencing court's analysis of proper instruction under current law omit the matters established by 2014 Cal. Voters' Initiative Proposition 47, which is a pertinent component of such "current law" (Id.), that deem the theft portion of the underlying action "shoplifting", a misdemeanor (See The Penal Code § 495.5), and the aforesaid "Penal Code § 189 (a), (e)" (APPENDIX B 8.) concern specified felonies, and not any misdemeanor, so that because said theft portion would be currently a misdemeanor, as a matter of law, "the new provisions of Penal Code § 189 (a), (e)" (Id.) would not be relevant to the action and, therefore, the Petitioner could not be "convicted of first degree murder under the new provisions of Penal Code § 189 (a), (e)" (Id.); and said record is clear that the killing stem from one blow with the Petitioner's hand, to the face of the decedent, and as a matter of clearly established law one blow with the hand does not amount to murder. (See e.g. Munoz, id.; Spring, id.; and Taixeira, id.)

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It is evident that "under the current law" (APPENDIX B 8a) the crimes of shoplifting and involuntary manslaughter would be at issue in the action, and not murder so that resentencing is due to the Petitioner; certainly, if nothing else, the assistance of counsel and a valid hearing on the matter is due to the Petitioner.

The aforesaid sentencing court, convinced by the foregoing matters, unduly act to: deprive the Petitioner of assistance of counsel notwithstanding that the Petitioner request such and the pertinent portion of the statutes command that if "the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner" (The Penal Code § 1170.95 (a) 2); disregard the Petitioner's duly presented notice of appeal (see APPENDIX C @ EXHIBIT "F" 4 and "H" therein.) to willfully and maliciously deprive the Petitioner the right to appeal the summary denial (See The Penal Code § 1237 and Cal. Rules of Ct. 30.1 (a).); arbitrarily deprive the Petitioner of a hearing on the matter; and which all seem to transpire pursuant to some established pattern of undue bias against the Petitioner whereby said sentencing court unjustifiably fail to file and hear cases/causes duly brought by the Petitioner to be heard (see APPENDIX C EXHIBIT "I", "J" 14-31, and "K" therein.), to plain insurgency of the matters established by Amendment 1 Constitution of the United States, and for the purpose of furtherance/promotion of the aforesaid unjust war that STATE OF CALIFORNIA /CDCR/CCPOA persons engage against the neutral, civilian, Petitioner, in time of peace, and on "the land" (Article III, id.). The pertinent court of appeal of the state is a party to the aforesaid insurgency of the matters established by Amendment 1 by means of its own declining to file and hear cases/causes brought by the Petitioner. (See APPENDIX C EXHIBIT "J" and "L" therein.)

On or about the 28th day of August, 2019, the Petitioner present the foregoing circumstances to be considered before the Supreme Court (cal.), by means of a Petition for a writ of habeas corpus, seeking issuance of a writ of habeas corpus that order adequate, effective, and just relief to the Petitioner to cure the injustices that said circumstances illustrate, including declaratory relief; an order that compel the pertinent court to file/process Petitioner's duly presented notice of appeal; appointment of an advocate to assist the Petitioner and award reasonable advocate/counsel fees; an order that change

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the venue to a proper court not infected with bias against the Petitioner; an order compelling the pertinent court to conduct resentencing, in accordance with the matters established by SB 1437, based on shoplifting and manslaughter; declaratory relief to the Petitioner from the unjust taxation STATE OF CALIFORNIA impose upon the Petitioner; an order that remove/release the Petitioner from STATE OF CALIFORNIA/CDJR/CCPOA contact/control/confinement/custody/captivity/handage/influence/intimidation/etc.; and an order that grant any further relief/remedy/remedy that said Court deem necessary to adequately and effectively cure the violations imposed upon the Petitioner, including a grant of amnesty to the Petitioner. (See APPENDIX C 17.) Because that for the entire time, commencing on the 8th day of July, 2007, on through to the present, the Petitioner has not perpetrated any crime but instead has spent such time self-educating and rehabilitating, i.e. taking self-initiative to realize progression and advancement, notwithstanding CDJR's incompetence and failure to render an environment conducive for such, the Petitioner petition for issuance of a Certificate of Rehabilitation. (See *id.* at 12 & 17.) Because California is a common-law state (See Reed v. Eldredge (1865) 27 Cal 346) all of the aforesaid components of sought relief is permissible as a matter of law.

On the ~~2nd~~ day of January, 2020, some all-capital-letter court, that is neither mentioned throughout Cal. Const. Art. VI (i.e. the portion of the state's Constitution that prescribe jurisdiction for the courts of the state), nor any positively enacted statute that confer such jurisdiction, and that the Petitioner did not bring this case to be heard before such all-capital-letter court (See e.g. APPENDIX C 1.), enter an order denying, summarily and without any order to show cause issuing, nor any evidentiary hearing having transpired, the Petitioner's Petition for a writ of habeas corpus, whereby such Order is without opinion and merely state that said Petition is denied, which is contrary to clearly established law and such orders are deemed void. (See Cal. Rules of Court Rule 4.55 (a).) Further, it is settled that allegations of a Petition for a writ of habeas corpus will be taken as true insofar as they have not been placed in issue by return (See In re Singer et al. on behalf of Singer, 134 Cal. App. 2d 547.) and because the court, pertinent here,

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Summarily deny, without any order to show causes, return, and hearing, the Petition for a writ of habeas corpus presented by the Petitioner (see APPENDIX "C".) none of the matters expressed via said Petition (see id.) have been placed in issue, whereby said Petition is verified (see id. @ 18 & 19.), and an evidentiary hearing is required if after considering the verified Petition, the return, any denial, any affidavits or declarations under penalty of perjury, the court finds there is a reasonable likelihood that the Petitioner may be entitled to relief (see Cal. Rules of Ct. Rule 4.551(f).), therefore, it seem evident that said summary denial is unwarranted and that the Petitioner is arbitrarily deprived of the evidentiary hearing that is due, which create due process (see Amendment XIV of Constitution of the United States.) questions.

The matters brought via the aforesaid Petition (see APPENDIX C.) seem to evince that the Petitioner is unlawfully imprisoned and arbitrarily restrained of the Petitioner's liberty, which, by clearly established state law the Petitioner may prosecute a writ of habeas corpus. (see The Penal Code § 1473.) The foregoing matters evince that the courts of the state act collusively to deny the Petitioner any actual, adequate, and legitimate means of recourse and remedy regarding the illustration that the Petitioner is presently deprived of liberty to conflict with multiple rights / privileges / immunities established by the Constitution of the United States, and therefore, issuance of a writ of certiorari is both necessary and warranted.

REASONS FOR GRANTING THE PETITION

The matters presented here, by means of the present Petition for a writ of habeas corpus, involve state sponsored conspiracy against, and insurgency to, provisions established by the Constitution of the United States unduly imposed upon the neutral, civilian, Petitioner, who is a National of the United States of America; in consequence of such state staffing perpetrators perception of the Petitioner's race or ethnicity/nationality/political class/disability; and whereby all the instruments of the state are manipulated by such staffing persons, collusively, to deprive the Petitioner of any and all actual, adequate, and legitimate means of recourse and remedy to said conspiracy and insurgency which involve the present and undue, continuing, depriving the Petitioner of enjoyment of the Petitioner's life, liberty, safety, happiness and privacy; to a manner that is contrary to decisions held and pronounced by this Supreme court and all seem to involve principles, the settlement of which is important to the public. STATE OF CALIFORNIA, by means of the collective persons that staff, act toward the Petitioner as one whom has no absolute, inalienable and unalienable rights which is contrary to the laws made in pursuance of the Constitution of the United States (see e.g. Phillip v. Univ. of Rochester (2003, CA 2 NY) 316 F.3d 291, Title 42, United States Code, sections 1981 and 1982.) and the settlement of such conflict must be important to the public and such unjust act seem to be based solely on the aforesaid perception of the Petitioner, which is why the courts of said state act to the unjust manner detailed throughout the statement of the case portion of the present Petition for a writ of certiorari and such unlawful judicial bias is contrary to decisions held and pronounced by the present court (see e.g. In re Murchison, 349 US 133 -), therefore, the grant of a writ of certiorari is warranted here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark Blank, All Rights Reserved.

Date: the 7th day of Feb. 2020.