ORIGINAL

In The

SUPREME COURT OF THE UNITED STATES

October Term '2019

19-7712

Luis Ray Jaramillo, Jr.,

Petitioner,

VS.

LORIE DAVIS, REGIONAL DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE-CORRECTIONAL
INSTITUTIONS DIVISION,

Respondent.

Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Luis Ray Jaramillo, Jr. Pro-se
T.D.C.J.#1966673
Coffield Unit
2661 FM 2054
Tennessee Colony,Tx. 75884
Unit Phone: 903-928-2211

QUESTIONS PRESENTED

1. Where Petitioner's 'state-trial court counsel' did not pursue Petitioner's wishes, commands, and orders to file a second-perfected-appeal after Petitioner personally made objections to the 'trial court judge's' amending the terms of the original plea deal and imposing conditions-of-probation that were not reasonably related to the offense of sex offender registration in retaliation for appealing prosecutorial misconduct once before; where Petitioner's 'state-trial court counsel' did not object to then mental-treatment for Petitioner was ordered by the same judge; where Petitioner's state-trial counsel' did not disclose to the trial court that the Petitioner suffered "issues of incompetence" but only mentioned during the revocation hearing that "Petitioner had a talent for upsetting everyone"; where Petitioner's 'state-trial court counsel' was not prepared neither reasonably competent to render effective representation to the sudden and instant "First Amended Motion To Revoke" which was introduced for the 'first-time' at the "revocation hearing" inviolation of due process and Petitioner's 'state-trial court counsel' not objecting to the "First Amended Motion To Revoke" filed in violation of due process by Prosecutor-Christopher Demartino; was such Petitioner denied his 'Sixth-Amendment' right to effective assistance of counsel, where...
(1) his counsel did not pursue his wishes, commands, and order to enter an appeal so appellant-counsel could be appointed to pursue objections to 'trial court judge's' abuse of discretion of amending the terms of the original plea deal and imposing conditions of probation that were not issued before, and not reasonably related to the offense he was on probation for, but imposed and ordered by trial court judge in retaliation for appealing prosecutorial misconduct, and (2) where his counsel made No objection to his restoration of competence by 'competency-hearing-judge' but the 'same judge' ordered and imposed mental-health-treatment, and (3) where his counsel did not disclose to the trial court that he suffered "issues of incompetence" but only mentioned during the revocation hearing on 'November 13,2014', that "he had a talent for upsetting every one", and (4) where his counsel knew he was not prepared for the "First Amended Motion To Revoke" which was filed in violation of due process and introduced on the day

of the revocation hearing in violation of the due process of legal notice to prepare a defense and neither did his counsel object to the "First Amended Motion To Revoke" filed in violation of due process of law?

2. Where Petitioner's 'appellate counsel' did not inform Petitioner of the right to submit a "pro se appellant's brief" during the "first-appeal-attempt" to ascertain the 'Assistant-District Attorney's' fraud of altering the trial court records and the 'trial judge's' orally pronounced judgment and sentence, to correct the court-records/sentencing-court-records; where Petitioner's 'appellate counsel' was ineffective for submitting inadequate briefs during "both appeal-attemts" where neither brief referred to anything in the record that could arguably support an appeal; where Petitioner's 'appellate counsel' failed to raise insufficient evidence and for not perfecting an "appellant's brief for appeal" upon Petitioner's request and order; was such Petitioner denied his 'Sixth-Amendment' right to effective assistance of counsel on appeal, where...
(1) his 'appellate counsel' did not inform him of the right to submit his own "pro se appellant's brief" during the 'first-appeal-attempt' to complain of the 'assistant-district-attorney-christopher W.Demartino' altering the "trial court records-sentencing records" and the 'trial judge's' orally pronounced judgment and sentence, to correct "trial court records-sentencing records", (2) where his 'appellate counsel' was ineffective for submitting inadequate briefs during "both appeal-attempts" where neither brief referred to anything in the record that could arguably support an appeal of the ineffective assistance of trial court counsel at the revocation hearing, the many abuses of discretion by trial court, or of the prosecutorial-misconduct, or of the due process violations by probation officer(s) and assistant-district attorney and trial court; (3) where his 'appellate counsel' failed to raise insufficient evidence, of 'probation officer(s)' & 'state's attorney's' claims of evidence to allegedly support revocation of his probation, in violation of the 'FOURTH-Amendment' under the AUTHORITY of "STONE, 428 U.S. 465", OPPORTUNITY, and for not perfecting an "appellant's brief" for the 'second-appeal-attempt' upon his request and order to 'appellate counsel' to do so; where his

'appellate counsel's' unprofessional conduct rose to a level of egregious attorney misconduct and petitioner offered and showed proof of bad faith, dishonesty, divided loyalty, etc... to the lower courts?

3. Did the'trial court' abused its discretion by misleading Petitioner into thinking that the terms of the "original plea bargain" were accepted and that the "sentence and conditions-ofprobation" he originally heard the 'trial court judge' orally pronounce in the courtroom was the same sentence and terms and conditions that he would be required to serve; did the 'trial court' continue to abuse its discretion by retaliating on Petitioner for trying to appeal once (i.e.:trying to appeal 'state's Attorney-Christopher W.Demartino's prosecutorial-misconduct of altering the sentencing-court-records after 'appellate-lawyer' deliberately sabotage the 'first appeal' to discriminate on a registered sex offender) the "altered" and "changed terms" of the original-plea-bargain, and then by deterrance of his pursuits to appeal a 'second-time' the "amending" of the 'original-plea-bargain' and the 'sentence-conditions-of-probation' to a very highly restrictive sex offender probation (i.e.:that was not originally ordered to a regular probation but highly restrictive sex offender conditions unreasonably unrelated to the offense and unconstitutionally imposed without due process) and his already old sex offender status; did the 'trial court' without interruption abuse its discretion and allowed probation officer(s) to impose "other highly restrictive" sex offender conditions (i.e.:as probation-duration progressed border line civilly comitting him without due process, hearing or cause) and not giving him "legal notice" of the imposition of the "unreasonable unrelated highly restrictive sex offender conditions-ofprobation" that had him civilly committed and enforced "them" on him; did the 'trial court' remain abusing its discretion by continuously depriving the Petitioner of his liberty, and other liberties (i.e.:"GOD" given rights), and property without due process; did the 'trial court' resume abusing it discretion by not abiding by nor following the REQUIREMENTS of the "acts of the law" neither ensuring or supervening the REQUIREMENTS of the State or Federal constitutions because Petitioner is a 'registered sex offender' whose original sexually-oriented-conviction is now approximately 'twenty-(20)-years-old' from the date of this filing; did 'trial court' continue

to abuse its discretion when 'state's Attorney-Christopher W. Demartino' breached plea agreement at the revocation hearing that resulted in the revocation of Petitioner's probation and a 'ten(10)-year' prison-sentence for a victimless, non-violent and non-aggravated criminal offense?

4. The principle question that is before the "United State Supreme Court" that none of the lower courts want to discuss is not solely whether the Petitioner accepted highly restrictive sex offender conditions-of-probation, but whether highly restrictive sex offender conditions-of-probation; that deprived Petitioner of certain civil rights as a father and as a man "without due process of law" and unconstitutionally imposed on him by 'probation officers', 'state's Attorney-Christopher W. Demartino', and 'trial court' just because Petitioner is a registered sex offender due to a 'twenty-(20)-year-old' conviction but "conditions" that were neither reasonably related to the current charge, conviction or probation and cirmumstances involved; were reasonable?

5. Are the provisions of the 'Texas' "Sex offender Registration Requirement" unconstitutional in violation of the Due Process and Due Course of law provisions of the Texas Constitution Article-1., § 19, and in violation of the SUBSTANTIVE Due Process component of the 'FOURTEENTH-Amendment's' Equal Protection Clause, where the Texas sex offender registration provisions violate due process and due course because they deprive a person of liberty and property by providing for criminal penalties against a person for failing to register as a sex offender as a result of having been convicted without allowing the Petitioner the opportunity to be heard on the issue of whether an offender/Petitioner is sexually violent; whether Petitioner was a threat to the public safety at the time he was originally convicted; whether if the Petitioner was ever a threat to the public safety, if the Petitioner remains a threat to the public safety at this time; and whether the Petitioner has rehabilitated himself to where he does not merit inclusion in the sex offender program, and where neither do the Texas sex offender registration provisions determination that the Petitioner contitutes a continuing threat to society?

6. Did Petitioner fail to report, where he is not given proper legal notice of an alleged-obligation to report to probation weekly after he was released from jail a 'second-time' on a "MOTION TO REVOKE-BOND", however, he is not required to report to probation weekly after his 'first-release' from jail on the same "MOTION TO REVOKE-BOND" and same"BOND CONTRACT" pending the same "MOTION TO REVOKE Hearing"?

7. Should Petitioner have been allowed the evidentiary hearing he requested of the District Court in this habeas proceeding for the purpuse of attempting to determine whether his due process rights througout his probation and incompetency-revocation proceedings involved were in fact violated that was the motivating force that triggered the revocation of his probations, as had been assumed without proof when he was sentenced more severely in the underlying criminal case?

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL CONSTITUTIONAL PROVISIONS

STATE CONSTITUTIONAL PROVISIONS

FEDERAL STATUTES

STATE STATUTES

OTHER

In The
SUPREME COURT OF THE UNITED STATES
October Term '2019

No._____

LUIS RAY JARAMILLO, JR.,
Petitioner,

VS.

LORIE DAVIS, REGIONAL DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE-CORRECTIONAL
INSTITUTIONS DIVISION,
Respondent.

Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Luis Ray Jaramillo,Jr. (hereinafter "petitioner") petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, rendered in his consolidated appeal, which judgment affirmed the denial by the district court of his 28 U.S.C. §2254 motions to either vacate the sentence imposed by the 290TH. Judicial District Court in Bexar County, San Antonio, Texas or; alternatively, to allow an evidentiary hearing to attemp to determine whether conditions-of-probation imposed on him was reasonable in light of the circumstances that had been involved, whether he had deliberately failed to report to probation with wanton disregard, whether he was incompetant at the revocation hearings, whether the Texas sex offender registration requirement(s) are unconstitutional in violation of the due process of the Texas and Federal Constitutions and thus what was the correct sentence to have been imposed.

OPINIONS BELOW

The pinions of the court of appeals (Pet.App. 1a), the United States district court (Pet.App. 2a & 2b), the Fourth Court of Appeals and the 290th Judicial Court in Bexar County, Texas (Pet.App. 5a & 5b) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on October 9,2019. [App. 1a] The jurisdiction of this Court is invoked under 28 U.S.C.§1254(1), and 28 U.S.C.§1257(a). The petition is timely filed pursuant to 28 U.S.C.§2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part:"congress shall make no law respecting [the right]... to petition the Government for redress".

The Fourth Amendment to the United States Constitution provides in relevant part: "The right of the people to besecure in their persons, houses, papers, and effect, against unreasonables searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the person or things to be seized".

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,... nor shall any person... be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...".

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal presecutions, the accused shall... have Assistance of counsel for his defense".

The Fourteenth Amendment to the United States Constitution provides in relevant part: "Section 1. No state shall make or enforce any law which shall abridge 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 of the laws.

Custody pursuant to an unconstitutional state court conviction or sentence is custody "in violation of the Constitution", and hence subject to Section 2254 attack (see,e.g., . WAINWRIGHT vs. SYKES, 433 U.S. 72 (1977)). A conviction or a sentence of a state court is unconstitutional under the Federal Constitution in the following circumstances:

FIRST, a conviction is unconstitutional if the state statute (i.e.:Tex.Code Crim.Pro. ch.62) defining the offense (E.g., SMITH vs. GOGUEN, 415 U.S. 566 (1974)), or some other state statute (i.e.:VIOLATION OF SEX OFFENDER REGISTRATION) affecting the validity of the finding of guilt (E.g., COUNTY COURT vs. ALLEN, 442 U.S. 140 (1979)), violates the provision of the United States Constitution, whether the statute conflicts with (1) the First

Amendment (E.g., SMITH vs. GOGUEN, 415 U.S. 566; & WIEGAND vs. SEAVER, 504 F.2d 303 (5TH.Cir. 1974)); (2) the interestate commerce clause; (3) the impairment of contracts clause; or (4) any provision of the Constitution which limits the exercise of state power (E.g., EISENSTADT vs. BAIRD, 405 U.S. 438 (1972) & KRAMER vs. PRICE, 712 F.2d 174 (5TH.Cir. 1983)). There are some old Federal habeas dating back to the 'nineteenth century', and never overruled, which hold that a state conviction based on an unconstitutional statute is void for lack of subject matter jurisdiction (E.g., EX PARTE ROYALL, 117 U.S. 241 6 S.Ct.734,29 L.Ed. 868 (1886)). And modern cases do not treat unconstitutional statutes as creating any jurisdictional deficiencies (E.g.,EISENSTADT vs. BAIRD, 405 U.S. 438,92 S.Ct.1029,31 L.Ed.2d 349 (1972)).

SECOND, a state conviction is unconstitutional, even though the statute (i.e.:Tex.Code Crim.Pro. ch.62) defining the offense or any other governing statute is constitutional, if the conviction (i.e.:or in this case, revocation) was obtained in violation of a federal constitutional right-that is, if the conviction or revocation resulted from the violation of a procedural right secured to the defendant by the Constitution (i.e.:as how the Petitioner was deterred from appealing the "unreasonable unrelated conditions-of-probation"; and how Petitioner was not given legal "conditions", inter alia; and how the whole competency hearing process was made unfair to Petitioner; and all because of a sexual-conviction 'twenty-years-old' now); (see, e.g., JACKSON vs. VIRGINIA, 443 U.S. 307 (1979). (EMPHASIS ADDED).

The bulk of the Federal constitutional procedural rights enjoyed by most state criminal suspects fall into one of three categories: FIRST, there are those procedural rights (i.e.:which the state of Texas violated through--out the prosecution of this case by not giving the Petitioner NOTICE of "unreasonable conditions-of-probation", or of alleged violations to prepare a defense to and trial-lawyer was not legally ready & then lied about it on appeal) secured by the due process clause of the 'Fourteenth Amendment' insofar as it embodies a requirement of fundamental fairness (i.e.:but incompetency hearing process was not made fair for Petitioner) but does'nt incorporate any of the Bill of Rights (see, e.g., MORAN vs. BURBINE, 475 U.S. 412 (1986); PROFITT vs. WALDRON, 831 F.2d 1255 (5TH.Cir. 1987) at 1248; & LOYD vs. WHITLEY, 977 F.2d (5TH.Cir. 1992) at 153 & 156). SECOND, there are the procedural rights secured by the provisions of the Bill of Rights made applicable to state criminal proceedings under the due process clause of the 'Fourteenth Amendment' by the "selective incorporation" decisions of the '1960's and other cases (see, e.g., BENTON vs. MARYLAND, 395 U.S. 784 (1869); MALLOY vs. HOGAN, 378

U.S. 1 (1964); POINTER vs. TEXAS, 380 U.S. 400 (1956);&ROBINSON vs. CALIFORNTA 370 U.S. 660 (1962)). THIRD, there are the procedural rights secured by the EQUAL PROTECTION CLAUSE of the 'Fourteenth Amendment' (i.e.:what the Texas Sex offender Registration Scheme, Tex.Code Crim.Pro. ch.62 violates) (E.g., SWENSON vs. BOSLER, 386 U.S. 258 (1967); YICK vs. HOPKINS, 118 U.S. 356(1886)).

STETEMENT

The court of appeals in this case denied Petitioner's motion for a certificate of appealability to appeal the denial of his 28 U.S.C.§2254 habeas application and denied his motions for leave to proceed I.F.P. on appeal and for appointment of counsel. Although Petitioner pleaded true to not showing up to report to probation (i.e.:only because Petitioner was not given legal notice to do so after bonding-out-of-jail), he did not plead true to deliberately violating the terms of his community supervision-probation for any wanton disregard for the law. Petitioner seek review of this denial of his 28 U.S.C.§2254 and refusal of his motion for C.O.A.

The Texas Sex offender Registration requirement statute (i.e.:Tex.Code Crim.Proc.-ch.62) has gotten out-of-hand with its unconstitutional provisions in violation of the substantive Due Process component of the 'FOURTEENTH-Amendment's' protections guaranteed under the United States Constitution-1.; and the Texas Constitution Article-1, Section:19; because they are violations of the due process and Due Course of law provisions, and are unconstitutional because of Equal Protection violations. Petitioner asserts, arguendo, that he is showing the "U.S. Supreme Court" that the SUBSTANTIVE rule of law, of the State Sex offender Registration Requirement, is defective, because it does conflict with the State and Federal constitutions; see CONNECTICUT DEPT. OF PUBLIC SAFETY vs. DOE, 538 U.S. 6,123 S.Ct. 1160, at 1165 (2003); and MICHAEL H. vs. GERALD, 538 U.S. at 121,109 S.Ct. 2333 (1989); in support of Petitioner-Jaramillo's right to a hearing under the Due Process clause. (EMPHASIS ADDED). Petitioner asks the U.S. Supreme Court to ultimately analyze his claims for "hearing" and "psychological evaluation" in terms of SUBSTANTIVE DUE PROCESS. Petitioner is challenging the SUBSTANTIVE-Rule of Law of the Texas Sex offender Registry Requirement-Scheme that is defective and conflicts with the State and Federal constitutions. Historically, the guarantee of "substantive

due process" was meant to secure the individual from the arbitrary exercise of powers of government; see DANIELS vs. WILLIAMS, 474 U.S. 332,106 S.Ct.662, at 665 (1986). It concerns the deliberate decision of government officials to deprive a person of life, "LIBERTY", or property. The term "liberty" used in the 'FOURTEENTH-Amendment' is not defined in the text. Yet, the concept of "substantive due process" is rooted in the term "liberty". Personal liberty is more that actual physical restraint and includes the concept of the very "fundamental rights" in which Petitioner-Jaramillo was deprived of without "substantive Due Process". The role of substantive due process is to protect "fundamental rights" from arbitrary deprivation by state-governments. Rights that have been recognized, by Petitioner-Jaramillo and those similarly situated, as fundamental include, e.g., the right to marry, to have children and raise them, to enjoy privacy, to make health care decisions (i.e.:to buy a medical apparatus at the Urologist specialist's recommendation); see ESTELLE vs. GAMBEL, 429 U.S. 97,97 S.Ct. 285 (1976) in support of Petitioner's decision to pursue his medical health care decision to straighten-out his priorities . The Texas sex offender registration provisions are violations of due process and due course because they deprive a person of liberty and property by providing for penalties against a person for failing to register as a sex offender as a result of having been convicted without allowing the person the opportunity to be heard on the issue of whether Petitioner is sexually violent; whether he was a threat to the public safety at the time he was originally convicted; whether, if Petitioner was ever a threat to the public safety, if he remains a threat to the public safety at this time; and whether Petitioner has rehabilitated himself to where he does not merit inclusion in sex offender registration program; see RICHARD vs. CITY OF WEATHERFORD, 145 F.Supp.2d 786 and (N.D.Tex. 2001); DARDEAU vs. WEST ORANGE-GROVE CONSEL. SCHOOL DIST., 43 F.Supp.2d 722, at 732 (E.D.Tex. 1999); In re M.A.H., 20 S.W. 3d 860,863 (Tex.App.-Fort Worth 2000); HOLLOWAY vs. WALKER, 790 F.2d 1170 (5TH.Cir. 1986); & SHIELDS vs. BETO, 370 F.2d 1003 (5TH.Cir. 1967), in support of Petitioner's argument that the State Sex offender Registry provisions are unconstitutional because of Due Process violation and because of Equal Protection violation. Not everyone suffers from behavioral abnormalities. There are some people that just made a mistake at a younger age and never made the same mistake twice, the Petitioner is one of those individuals who's NEVER committed a second-reportable offense, but because the Texas sex offender registration provisions don't provide the Due Process of a "psychological evaluation" before registration and aperates as a

"one-size-fits-all", lives are lost due to criminal acts being committed against registrants (i.e.:see website, www.humanrightsdefense center.org vol.28 N.5 ISSN:1075-7678 "sex offenders and vigilante Justice" "Registration, Tracking of sex offenders Drives Mass Incarceration Numbers and Costs") families are being ruined, and children are growing up in some (if not most) cases without their fathers to be another statistic in the adult criminal justice system. To be "civilly committed" in Texas, requires Due Process and Due Course of law provisions (e.g., HEALTH & SAFETY CODE [CIVIL COMMITMENT] §841.001 & 841.003), but there are No Due process or Due Course requirement for having to "register as a sex offender" in 'Texas'. For Petitioner and other citizens of Texas to be subjected to the provisions of the "sex offender registration requirements" will continue deprive him and other 'Texas citizens' of their liberty, or property or a part thereof without due course of law. **containing** statement of the case containing the facts material to the consideration of the questions presented would be almost impossible without the "MEMORANDUM IN SUPPORT" of the 28 U.S.C. §2254-PETITION; and every time Petitioner stood-up to protect his Due process rights and Federal Constitutional rights, 'County' and 'state officials' went to the extreme to change records and falsify court-documents, so not to draw any attention to the unconstitutionality of the "Texas sex offender registration requirement" that deprived Petitioner of liberty and property and ruined Petitioner's daughter mentally and psychologically.

The '290TH. Judicial Court of Bexar County, Texas, abused its discretion and violated Petitioners due process rights by misleading him into thinking that the term of plea bargain were accepted and that the sentence and conditions-of-probation Petitioner originally heard the 'trial court judge' orally pronounce in the court-room on 'september 25,2012', was the same sentence and terms and conditions that he would be required to serve; until the 'State's Attorney-Christopher W. Demartino' altered the "sentencing-courtrecords", after sentencing, and changed the terms and conditions the 'trial court judge' had not orally pronounced. At that time (i.e.:the 'sept.25,2012', sentencing hearing), judgment for "VIOLATION OF SEX OFFENDER REGISTRATION ANNUALLY", with a $1,500.00-fine, seven-years of community supervision-provation, No Harmful-injurous contact with daughter (i.e.:due to other criminal charges against Petitioner that were falsified and dropped-dismissed), and Anger Management classes was entered on 'September 25,2012'. The 'trial court judge' did not order any other "conditions", highly restrictive, or otherwise, besides the REGULAR conditions-of-probation for the "Regular Probation" that

was originally promised. The COURT REPORTER'S RECORD for the 'Sept. 25,2012', sentencing hearing (i.e.:which were apparently changed by Bexar County at some point because at the Federal habeas juncture the 'Federal Magistrate Judge' quoted something else) for the exact orally pronounce sentencing details (i.e.:the voice recordings) have NEVER been provided to the Petitioner at any point, and Petitioner's family to the present day has offered to pay for them (i.e.:EXHIBITS in support of the original 'Article-11.07-PETITION' provided at the state habeas juncture will prove this). When 'State's Attorney-Christopher W. Demartino' must've forgotten to add "anger management classes" when 'he' altered the "CRIMINAL DOCKET SHEET-COURT ENTIRES record to add: 'STOP', sex offender supervision', zero Tolerance', inter alia, (i.e:there were also documents in support of this, provided at the state habeas juncture). Petitioner speculates, that because a 'County Official-Shannon jones', who was trying to make a name for 'herself' in San Antonio, Texas, 'she' had requested that all defendants who were required to register as a sex offender, be placed in 'her' "SAFE ZONE PROGRAM" to monitor 'registered sex offender' sentenced to "community supervision-probation" for being convicted of sexually oriented offenses/crimes; because the Petitioner's original sexually oriented conviction was already over 'ten(10)-years-old' at the time of conviction of the current charge/offense (i.e.:FAILURE TO REG...), and the current conviction that resulted into the (alleged) regular probation that is neither sexually oriented, must've made this 'County Official-Shannon Jones' think 'she' was going to use the Petitioner to "cook the Bexar County's books" (e.g., in the event of audit or other unforeseen legal action(s)) to give the "false appearence" of 'their/her' "SAFE ZONE PROGRAM" working. Because the 'trial court judge' put special emphasis to Petitioner being required to partake in "Anger Management Classes" after ORDERING him to go back to his family to care for his daughter and support her (i.e.:due to other alleged criminal stemming from this conviction/probation that were also filed because of behavioral problems Petitioner was having with his daughter but that were also dismissed) (see Pet.App. 3a, EXHIBIT-H); the 'State's Attorney-Christopher W. Demartino' stated BOLDLY in open-court that 'he' would have the Petitioner put in "S.T.O.P." for "Anger Management Classes" but neither specified what the "S.T.O.P.-Program" really was. Pettitioner asserts, that just because he was required to registed as a sex offender for something he was lied-into when he, himself, was a lot younger and of which original-sexually-oriented-offense was committed well-over 'ten(10)-years-prior' at the time, this did not make him a bad-parent; and at No time did registering as a sex offender

ever make the Petitioner a bad-parent. The very first "S.T.O.P. class session" Petitioner attended, the 'S.T.O.P.-instructor' made sure that Petitioner understood that "S.T.O.P." had NOTHING to do with "Anger Management", but instead was a "sex offender-sex Addiction Therapy Program". Shortly after learning what 'State's Attorney-Christopher W. Demartino' had done, Petitioner immediately appealed the case and conviction but to get the terms of the "plea bargaing" (i.e.:that were originally accepted and ORDERED by the trial court judge) corrected and honored; and Petitioner was appointed 'appellate counsel-Vincent D. Callahan' for the first time as counsel on appeal, to which 'Attorney Vincent D. Callahan' deliberately sabotaged by submitting an "ANDER'S BRIEF" (i.e.:NO ERROR BRIEF) and did not inform Petitioner of "the right" to submit his own "pro se appellant's brief", and immediately withdrew 'himself' as counsel on appeal (i.e.:LUIS JARAMILLO, JR. vr. STATE, No.04-12-00650-CR, FOURTH COURT OF APPEALS, SAN ANTONIO, TX.). After this first-appeal attempt was over, a warrant for Petitioner's arrest was filed and on 'March 15,2014', Petitioner was arrested at his place-of-residence, incarcerated-deteined in the Bexar County Jail, and dragged into court in chains just so the 'trial court judge' could tell the Petitioner, "that the appeal had failed and that NOW he was on probation"; but why did Petitioner have to endure all that embarrassment and harsh-cruel treatment? why couldn't the 'trial court judge' just, summons Petitioner and direct him to report to the "Bexar County Probation Department", like other regular probationers? On 'March 18,2014', 'trial court judge' reordered (i.e.:as conducting another sentencing de novo) Petitioner back onto probation; however, this time 'trial court judge' amended the plea bargain and conditions-of-probation to sex offender supervision and issuing a "GRANT" in the case/probation, which was not agreed upon, and ordering "NO CONTRACT WITH ALYSSA JARAMILLO" (i.e.:Petitioner's daughter), sex offender Predator Therapy classes/ or P.A.C.E., and to be "treated as a HIGH RISK sexual predator" (i.e.:civil commitment requirements), inter alia. NONE OF THIS was originally ordered by the 'trial court judge' at the 'September 25,2012', sentencing hearing, so it was pretty obvious that 'State's Attorney-Christopher W. Demartino' misled the 'trial court judge' into thinking and/or believing that Petitioner had appealed 'her' judgment, instead of state's-attorney's prosecutorial-misconduct and fraud (i.e.:PLEASE SEE "APPENDIX 3a" WITH ATTACHED EXHIBITS IN SUPPORT). The "odd thing/issue" about "APPENDIX 3a" (i.e.:other material Petitioner believes essential to understand the Petition), pursuant to SUPREME COURT RULE 14(1)(i)(vi)) is that some one here at the 'T.D.C.J.-Coffield Unit' deliberately deterred/delayed "this document" (i.e.:PETITIONER'S PRO-SE

OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATION) from being delivered and filed into the "U,S. District Court, Western District of Texas, San Antonio Division" until after the "District Court" made a ruling denying Petitioner's 28 U.S.C.§2254; because the "Coffield Unit-Mailroom Records" indicated that "APPENDIX 3a" left the prison on 'Febrary 7,2019', but did not get filed into the "U.S. District Court" until 'Febrary 25,2019'; 'One(1)-day' after the "U.S. District Court" made its ruling denying Petitioner's 28 U.S.C.§2254-PETITION/APPLICATION. 'APPENDIX 3a" was very relevent and essential to the facts of all that occurred in the space-of-time in between the time the first-appeal-attempt was filed, until it was denied (i.e.:approximately a little over a-year-and-a-half(1½)). Petitioner refuses to believe the "U.S. post office" misplaced "APPENDIX 3a" for '19-days' until "it" was finally delivered to and filed in the "U.S. District Court". Petitioner does acknowlege that he has to register as a sex offender because of a very promiscuos girl that lied to him about her true age when the Petitioner was younger himself, but not even the "San Antonio Police Department-Sex offender Registration office" had the Petitioner registered as a "HIGH RISK"; and all the time that passed in between the "filing and denial" of the first-appeal-attempt the 'trial court judge' was OBVIOUSLY not concerned about Petitioner's daughter because there were not ordered for NO CONTACT with 'Alyssa Jaramillo' issued at the 'September 25,2012' sentencing hearing nor in the plea bargain agreement (i.e.:see again "APPENDIX 3a"). This retaliation amended resentencing on 'March 18,2014', did causa a lot of hardship for Petitioner and daughter because she had No place else to go. The Petitioner immediatly OBJECTED through 'Attorney Keith Engelke' (i.e.:who was not even Petitioner's court-appointed attorney-of-record at the time) but was present in the '290TH. District Court'; after the Petitioner had been arrested, thrown into jail, and brought before the 'trial judge' in chains without a lawyer/court appointed-attorney just so the 'trial court judge' could taunt Petitioner not having a lawyer present. Petitioner was released from the 'Bexar County Jail' on an "amended sentence and highly restrictive sex offender conditions-of-probation on 'March 20,2014', still not having a lawyer appointed to assist in a "second appeal attempt" for the "OBJECTIONS" Petitioner made in opencourt 'March 18,2014'. Even through the "U.S. District Court" Magistrate Judge's "Report And Recommendations" (i.e.:see Pet.App. 2b) reports a different alleged trancribed record, Petitioner made every attempt to document his "OBJECTIONS" that the lower courts are overlooking and secured proof of the "same alleged records" Magistrate Judge alluded to (i.e.:in Pet.App. 2b) but alleging different facts [slightly and different] (i.e.:see Pet.App. 3a)

in support of "someone going to the extreme" to alter the records, if not the 'U.S. Magistrate Judge-Henry J. Bemporad'. Every time Petitioner was coerced/ threatened to sign a document or be deprived of his liberty, he wrote "UNDER DURESS" under his signature indicating his attempt to document such objections for appeals. After Petitioner's release from jail on 'March 20,2014', on an amended-resentencing, Petitioner bagan making preparations and arrengement to appeal 'trial court judge's (i.e.:Honorable Melissa Skinner's) amended judgment (i.e.:having OBJECTED to it '3-18-2014') and began asking question to the Probation Court Coordinator in how to appropriately navigate an appeal of such caliber through the justice system, that Petitioner was not a lawyer nor versed in the laws of Texas and a layman. Petitioner speculates that this must've angered somebody (i.e.:Christopher W. Demartino, Jeffery Dew, or Shannon Jones, or all three of them) because approximately 'eighteen(18)-days' after his release of jail (i.e.:3-20-2014) on an "amended-regular-probation", Petitioner was charged with allegedly-commiting his first violations to the emended-probation; and on 'April 8,2014', the first "Motion To Revoke Community Supervision" (i.e.:hereiafter refered to as "M.T.R.") and 'another WARRANT' was filed and issued for Petitioner's arrest. San Antonio Police Department's 'arresting officers' again entered into Petitioner's registered place-of-residence, scared his family and neighboords with their profanity and aggressiveness (i.e.:see Pet.App. 3a, Pages:36-38), and threw him into jail again to await revocation hearing. Approximately 'April 9,2014', 'Attorney Keith Engelke' was "officially" appointed by the 'trial court' to represent Petitioner at the "felony-M.T.R.-revocation hearing"; but of course, those records were neither provided. The "violations" that Petitioner "allegedly violated" and mentioned in the "first M.T.R." filed '4-8-2014' are not on the original sentencing order, conditions-of-probation order (i.e.:see Pet.App. 3a, EXHIBIT-F), nor the amended-conditions-sentencing-order of '3-18-2014'; and were proven false and incorrect because the "alleged violation Petitioner allegedly committed are not mentioned ANYWHERE (to the present date) on any filed and signed-by-Petitioner papework-of-notice or document. The 'first M.T.R.' was DISMISSED, with the condition that Petitioner "make an untrue statement on the record" pleading true to at least 'one(1)-violation', and he was released from the 'Bexar County Jail' 'May 1,2014'.

Then on 'May 5,2014', Petitioner AGAIN continued making preparations in motion the 'trial court' to produce the "COURT REPORTER'S RECORD for the 'September 25,2012', sentencing hearing" and even began [ordering and urging] (i.e.:now, officially court appointed) 'Attorney Keith Engelke' to

[obtain these "RECORDS", supra] to remind the 'Honorable Melissa Skinner' of 'her' honoring the original plea deal 'she' accepted '9-25-2012'; or to allow me to "take the plea back".

Petitioner, AGAIN, must've angered someone with the "Bexar County Probation office" by attempting to exercise his state and Federal constitutional rights to submit a 'secon-timely' but perfected-appeal to petition the "Fourth Court of Appeals" for redress of the 'trial court's' abuse of discretion of amending the terms of the plea bargain and the conditions -of-probation on '3-18-2014'; because on 'May 16,2014', (i.e.:approximately '15-days' AFTER Petitioner's '5-1-2014' release from jail) a "second-M.T.R." and "WARRANT" for his arrest was filed and issued "alleging other ridiculous violations" of "regular probation" that the Petitioner was NEITHER given notice of (i.e.:see Pet.App. 3a, EXHIBIT-F) (but of., Pet.App. 2b;Page-4, Ln.1-6) and he was immediately arrested at his registered place-of-residence, and 'San Antonio Police officers' AGAIN Scared Petitioner's family with 'their' profanity and aggressiveness and embarressed Petitioner and his family in front of neighbors by refering to Petitioner with derogatories (e.g., Predator, Pedophile, & sex offender, etc...) and again threw Petitioner into the 'Bexar County Jail' on 'May 19,2014'.

On 'July 27,2014', Petitioner BONDED-OUT of jail on an "M.T.R.-BOND", approved and granted by 'trial court judge' herself, pending revocation hearing for the '5-16-2014' "second-M.T.R. and WARRANT" filed and issued; (i.e.:on 7-27-2014), the ONLY instructions given to the Petitioner, was the legal-notice and obligation to report immediately to the "Bonds Company" his family used to bound-him-out of jail. At No time during out-processing after posting Petitioner's "BOND", NEITHER upon his release from jail was he ever given any NOTIVE or any other information of an order or abligation to report to 'Probation Officer-Jeffery Dew', and NEVER was he given anything to sign indicating or even implying him to anyone but the "Bonds Company"; and it OBVIOUSLY was not an issue because there are No other "M.T.R. Reports/Complaints" filed against the Petitioner for this "space-of-time" he was out-on-bond preparing for the 'second-revocation-hearing' pending (i.e.:from '7-27-2014 throu '8-14-2014', approximately "3-weeks").

On 'August 14,2014', Petitioner was found to be INCOMPETENT and rearrested in court (see Pet.App. 3a, page-28). On 'August 25,2014', Petitioner was transported from the 'Bexar County Jail' to the 'San Antonio State Hospital' (i.e.:a.k.a. "S.A.S.H.") for a "PSYCHOLOGICAL EVALUATION", that never took place. Petitioner told 'Attorney Keith Engelke' that he was not receiving the

"mental-health-treatment" neither the "psych-evaluation" he was suppose to be at the Hospital for, to which 'Attorney' releyed to 'state's Attorney-Christopher W. Demartino'; and on 'October 8,2014', Petitioner was discharged from "S.A.S.H." with "false reports" of him not complying with "alleged-mental-health-treatment" and transported back to the 'Bexar County Jail' and rebooked to await "Competency Hearing". Although Petitioner was originally found to be MENTALLY UNSTABLE by the 'Medical Examiner' (see Pet.App. 3a, page-28) at the 'County Jail' that sent him to "S.A.S.H." for mental-health-treatment in the first place (see Pet.App. 3a; page-30, Ln. 30-33), 'Judge Andrew Currethers' decided that Petitioner was well enough to stand-endure the revocation hearing (see Pet.App. 3a; Page-45 throu 46) and entered a JUDGMENT of "Restoration of Competency" and remanded Petitioner to remain in jail pending revocation hearing. This JUDGMENT by 'restoration-hearing-judge', upset the 'trial court judge' because on 'Octuber 9,2014', 'judge Melisa Skinner' AGAIN released Petitioner from jail out-onto the SAME "M.T.R.-BOND and Contract" pending the SAME "revocation hearing" for the SAME second-M.T.R. & WARRANT filed & issued on '5-16-2012', supra. This Now upset the 'Restoration Hearing Judge-Andrew Currruthers', because even though 'Restoration Judge' found Petitioner to be "COMPETENT", because the 'trial court judge' release Petitioner back out on his paid-for-bond, 'Restoration judge-Currethers' Now felt Petitioner was in need of mental-health-treatment and ORDERED "mental-health-treatment" for him while he was out on "M.T.R.-BOND"... allegadly competent...(???).

AGAIN, at No time during this "second-out-processing" upon release from jail on the SAME "M.T.R.-BOND"; was the Petitioner ever given notice of, or any other information neither "papers to sign" indicating or implying that it was his duty to report to 'Probation officer Jeffery Dew', while out on BOND. Petitioner was ONLY ordered to report to the "bonds Company", again, upon his immediate release... and Now mental-health-treatment.

Petitioner did, however, make a "good faith attempt", of his own accord, to report to 'Probation officer Jeffry Dew' shortly after his 'second-release' on the SAME BOND to inquire of his statue quo, and at that time (i.e.:exact date of good-faith attempt unknown) learned that 'Jeffery Dew' wasn't his Probation officer anymore and was reassigned to another 'Bexar County Probation officer-Ms. Jackson;; And at that time 'Ms. Jackson' told Petitioner that 'she' could not see him because 'she' hadn't scheduled him for that Particular time, and told the Petitioner to leave. Petitioner responded to 'Ms. Jackson' that he was not going to leave until he got something on paper indicating that he did make an attempt to report of his own accord and

inquire of his status quo. 'Ms. Jacson' then threaten Petitioner that, "if he did not leave she would call police and have Petitioner arrested & thrown into jail again. So being in FEAR of his life, safety, and fredom being further deprived, Petitioner left the "Bexar County Probation office" and the vicinity immediately. Petitioner being in FEAR of the mistreatment of 'Bexar County Probation officers Jeffery Dew' and 'Ms. Jackson's', threat of deprivation of freedom did FEAR this retaliation and was afraid to return to those 'two-probation-officers' until he had a chance to tell the 'trial court judge' everything that was going on and being done to him, at the revocation hearing. At No time even after was Petitioner given Notice to report while out on M.T.R.-BOND awaiting hearing. Petitioner was out on "M.T.R.-BOND" approximately '29-days', this time, reporting to his "BOND'S MAN/COMPANY", to "Pre-Trial Services", and the "Center For Health Care Services" (i.e.:due to the mental health treatment order by 'Restoration Judge Andrew Curruthers', that 'he' didn't feel Petitioner needed "mental health treatment" as the reason for restoring Petitioner's alleged competence). On 'November 7,2014', exactly '6-days' before the revocation hearing, a "MOTION TO AMEND the original Second-M.T.R." (i.e.:filed on 5-16-2014) was filed with the 'trial court' in violation of Article-42.12, section:21(b-2) (i.e.:which has been REPEALED to Article-42A.751 (f)) of the "Texas Code of Criminal Procedure" (see Pet.App. 6b); and a separate WARRANT for the Petitioner's arrest was issued on 'November 10,2014'. On 'November 12,2014', Petitioner was rearrested at his registered place of residence by arresting officers, and threw him into the 'Bexar County Jail', again. On November 13,2014', (i.e.:the day of the second pending M.T.R.-revocation hearing), Petitioner was brougnt before the trial court judge (i.e.:Honorable Melisa Skinner) in chains and county jail oranges to make him out to be this "alleged criminal Scum-menace with no regard for the laws of the 'state'" and to give 'the Judge' the false appearance of Petitioner being a "disrespectful and irresponsible high-risk threat to public safety". So for the 'first time', at the 'November 13,2014', revocation hearing, Petitioner and 'Attorney Keith Engelke' were given notice of the "FIRST AMENDED M.T.R."; and the "original violations" filed 'May 16,2014', were thrown out (i.e.:as if to have given the court the assumed-jurisoiction over Petitioner, long enough, to allege something 'remotely allegedly-legitimate' against him). Petitioner did attempt to explain these issues to the best of his natural-unlearned-abilities, since 'Attorney Keith Engelke' was not prepared and afraid to speak up, but because of Petitioner's lack-of-knowledge in the law(s), ALL the facts were deliberately miscontrued and twisted by 'Assistant District Attorney-Christopher

W. Demartino'. Petitioner's [alleged-regular] community supervision-probation was revoked and he was sentenced to the max term of 'ten(10)-years' in the Texas Department of Criminal Justice-Criminal Institutions Division for allegedly having failed to report to probation, while out on "BOND" and preparing for the "M.T.R.-violations" filed:5-16-2014, for the dates of the '13th., 20th., & 27th., of October,2014'. On 'December 5,2014', Petitioner filed his "DIRECT APPEAL" with the '290TH. Judicial District Court' of Bexar County, Texas, appealing the decsion of the revocation hearing, in the "Fourth Court of Appeals". On 'December 17,2017', 'Attorney Vincent D. Callahan' was "once again" appointed to represent the Petitioner on "direct appeal" in the same case; but of course, No one informed Petitioner of 'who' his 'appellate lawyer' was until his Now ex-girlfiend looked-up Petitioner's "appellate-court-information" over the internet. All of the facts, supra, were explained in writting to 'Attorney Vincent Callahan', with instruction "on what" and "how" Petitioner wanted 'Attorney Vincent Callahan' to appeal and to make the appeal about (i.e.:2 stamped-dated COPY of that letter and reply was a part of the "EXHIBITS" of the original 'State-Application for Writ of Habeas Corpus' filed:5-4-2017, & labeled as "EXHIBIT-2"; see Pet.App. 4a). However, on 'February 18,2015', 'Attorney Vincent Callahan' "once again" submitted another "ANDER'S BRIEF" (i.e.:No Error Brief); however, did inform Petitioner (this time) of his right to submit his own "Pro-Se Appellant's Brief". On 'April 10,2015', Petitioner filed his "Pro-Se Appellant's Brief" with the "Fourth Court of Appeals" in San Antonio, Texas, arguing (in his unlearned capacity) the violations of the "Texas Code of Criminal Procedure, Article-42.12 §§11(d)(1)(B), 21(b-2), & 24" (i.e.:which have since been REPEALED to reflect the folloging, to wit:42A.506(1)(B), 42A.751(f), & 42A.756) (see Pet.App. 6b) inter alia, and the abuse of discretion by 'trial court-revocation hearing's and 'State's Attorney-Christopher W. Demartino' violation of his due process rights. On 'June 10,2015', the 'State-Appellee' filed a letter WAVING the right to file a 'BRIEF IN RESPONSE' to Petitioner's Pro-Se Brief. On 'August 5,2015', the "Fourth Court of Appeals" set this case and appeal for "Formal Submission on Brief Only Hearing" to be conducted on 'September 2,2015'. On 'August 2,2015', Petitioner filed a letter with the "Fourth Court of Appeals" requesting to be personally present at the '9-2-2015' "Formal Submissions Hearing" because he KNEW 'Attorney Vincent Callahan' was not looking out for the Petitioner's best interest and just straightout didn't trust 'Attorney Vincent Callahan'. Petitioner was not allowed to attend the 'Sept.2,2015', hearing. On 'September 9,2015', the "Fourth Court of Appeals" DENIED Petitioner's "direct appeal". On 'December 18,2015', Petitioner filed his "Pro-Se

Petition For Discretionary Review" in the 'Texas Court of Criminal Appeals' (i.e.:"C.C.A. No.PD-1309-15" & '4TH.C.O.A. No.04-14-00902-CR'). See App.4b). On 'March 2,2016', Petitioner's Pro Se Petition for Discretionary Review was REFUSED without written order. On 'March 31,2016', Petitioner's revocation and 'ten(10)-year-sentence' state-JUDGMENT become final. On 'May 5,2017', Petitioner filed his 'state-Application For Writ of Habeas Corpus' with the 'Texas Court of Criminal Appeals' in C.C.A. No.WR-56,888-09 (see App. 4a). On 'May 2,2018', Petitioner's 'state-Habeas Corpus Application' (i.e.:under Art.11.07, Tex.Code Crim.Pro.) was DENIED. On 'June 11,2018', Petitioner filed his Pro Se Petition for Writ of Habeas Corpus (i.e.:pursuant to 28 U.S.C.§2254) with the "United States District Court, Western District of Texas, San Antnio Division" under Civil Action No.SA-18-CA-579-XR; and on 'January 24,2019', Petitioner's pro se '28 U.S.C.§2254-PETITION, was DISMISSED (see Pet.App. 2a & 2b). On 'January 25,2019', Petitioner DOCKETES his "NOTICE OF APPEAL" with the "United States Court of Appeals for the Fifth Circuit" in U.S. Court of Appeals Docket No.19-50074; and on 'October 9,2019', his Motion for certificate of Appealability was DENIED.

Petitioner is not a lawyer and may not have articulated these FACTS, supra; however, he did show these established "Federal Supreme Court" principles of law to the 'U.S. District Court' when he humbly asked for 'C.O.A. to issue' to conduct an "evidentary hearing" at the least (see Pet.App. 7a). It is apparent in this case, that in 'Texas' and in the "eyes of the Fifth Circuit" for standard-of-review, not all citizens are any longer entitled to state of Federal "due process" neither "fundamental fairness". A Certificate of Appealability should have issue in this case.

REASONS FOR GRANTING THE PETITION

It is clear that there are No conflicts among the Circuits on the axact point involved on this case (see SMITH vs. DOE, 538 U.S. 84 (2003)) in regards to "S.O.R.N.A.". (i.e.:Nation wide-sex offender registration and Notification Act); however, the "Texas sex offender registry", though popular, bring with it enormous fisical costs and unintended concequences for offenders AND communities. Improvements to the "Texas sex offender registry" (i.e.:Tex.Code Crim. Pro. Ch.62), Petitioner argues, would mediate the stigma resulting from the "sex offender label" and reduce barriers to offender reintegration, by providing "some" due process and a psychological evaluation for ALL required to take part "Texas sex offender registration requirement".

The foundation of "Habeas Corpus" is suppose to be to test the validity

of the 'state' criminal judgment. The post-conviction writ of habeas corpus is suppose to be the means to attack unreasonable conditions, unreasonable conditions-of-probation or a criminal judgment and sentence secure through the use of illegal procedures. When a fundamental right (i.e.:"due process rights", as alleged in this case) has been violated or a procedural safe-guard bypassed (i.e.:as how Probation officers Jeffery Dew, Shannon Jones, and State's Attorney-Christopher W. Demartino "violated" Petitioner's "due process" to be given NOTICE & an opportunity to be heard before the imposition restrictive conditions-of-probation that had him civilly committed or to be given NOTICE to prepare a defense; (Refering Pages:5-8, 10-13; STATEMENT, supra), the WRIT is suppose to be the PROPER DEVICE for "challengin these violations". The writ of habeas corpus is ENSURE JUSTICE. It is the device used to correct a fundamental constitutional error that has occurred in the proceeding(s) that resulted in conviction, revocation and/or incarceration. Habeas Corpus is not merely another stage in the "appellate process". Rather it is a completely separate proceeding designed to test the "Justice" of the 'Texas system'. But those in 'Texas' have decided to OVER-LOOK these specfics or the "SPECIFICS", of the FACT that 'they' did not give Petitioner proper and legal NOTICE or hearing of the imposition of highly-restrictive sex offender conditions-of-probation to Know what was expected of him; nor of the "alleged-obligation" to report weekly (i.e.:not monthly) for the weeks of the '13th'., '20th'., & '27th'. Of October; 2014, neither legal NOTICE of the sudden "FIRST AMENDED M.T.R." to prepare a legal defense to. These, inter alia, are INDISPUTABLE facts that CANNOT be denied that the lower courts are refusing to discuss, nor intention because of how badly the result of the consequences of the "Texas sex offender registration requirement(s)" effected and stigmatized (i.e.:pursuant to STIGMA PLUS DOCTRINE: Black's Law Pg.1550 [Civil Rights-1038; Constitutional Law-4040]) the Petitioner and his family.

Petitioner's appeal and CRY OUT for JUSTICE for a "C.O.A. to issue" for the denial of his 28 U.S. §2254 was denied by the 'Fifth Circuit', because he allegedly did not make the requisite showing, based on "principles of law" REJECTED by this "Honorable United States Supreme Court" (see Pet.App. 1a). Petitioner has meet the substantial showing of §2253(c)(2) and showed the 'Fifth Circuit' that the "U.S. Supreme Court" instructed that a 'court of appeals' should limit its examination to a "threshold inquiry" into the underlying merit of his claims (see PIPPIN vs. DRETKE, 434 F.3d 782, at 86-87 (5TH.Cir. 2005); Miller-El vs. Cockrell, 537 U.S. 322,154 L.Ed. 2d 931,123 S.Ct. 1029, at 1034 (2003); by citing the "specific statute(s)" and

"U.S. Supreme Court clearly ESTABLISHED law & precedents" to challenge the unreasonoble and unrelated conditions-of-probation and he cited specifically the "specifics" of congnizable claims to challenge the SERIOUS violations to his 'state' and "Federal" due process constitutional rights that warrant the issue of a "certificate of appealability"; but those SERIOUS violations to Petitioner's 'state' and "Federal" due process and constitutional rights, and the FACT that he was deprived of his liberty and other liberties without cause and without the "showing of good cause" and for No reason to justify such deprivation of rights and liberty(ies) (i.e.:only for being labeled as a "Registered sex offender" due to a sexually-oriented-offense Petitioner was lied into '20-years-old to date) caused by the prosecutorial-misconduct of 'State's Attorney-Christopher W. Demartino' not wanting to provide Petitioner due process of law (e.g.,Ex parte RICH, 194 S.W. 3d 508 (Tex.Crim.App. 2006); RICHARD vs. CITY OF WEATHERFORD, 145 F.Supp. 2d 786 (N.D.Tex:2001; SMITH vs. DOE, 538 U.S. 84 (2003)), was just OVERLOOKED by the "U.S. District Court" and the "Fifth Circuit-Court of Appeals" because he argues for a change in the Texas-State law(s)/requirement(s) (i.e.:Tex.Code Crim. Pro. Ch.62, Sex offender Registration Requirement) (see Pet.App. 6a) to provide "due process" and require "psychological evaluations"; before subjecting a 'defendant/registrant' to the sex offender registration program and before dissemination of information to the community and a separate determination that in the past a 'registrant' constituted a continuing threat to society, whereas other comparable 'state schemes' require some showing that the 'registrant' was a repeat habitual sex offender before dissemination of information to community and imposition of highly restrictive conditions and/or requirement(s); in which change in the 'state law' is tantamount for society changing for the better in 'Bexar County' San Antonio, Texas', as exhibited in this case alone exhibited in other legal trends; and in the interest of fairness and justice, the old state law/requirements (i.e.:Tex.Code Crim.Pro. Ch62) must be retired improvements be made because it has become harmful in modern applications.

The "Texas-State Sex offender Registry" was suppose to be by design, a result of the complex machinery of checks and balances; but what 'Christopher W. Demartino', 'Jeffery Dew', 'Shannon Jones', 'Competency hearing Judge', AND 'trial court judge' (i.e.:including both trial & appellate lawyers) all did to Petitioner (i.e.:deprived him of due process) because the "State Sex offender Registry Requirement" allegedly allowed 'them' to be able to; was wrong, illegal and unconstitutional. Does the diffusion of POWER between the "FEDERAL" and 'state' governments, means that 'Texas is allowed to implicate

laws/requirements that are contrary to or are unreasonable to Petitioner's Federal due process and Constitutional rights or clearly established U.S. Supreme Court law? "state laws/requirements" that ruined Petitioner's parent-child-relationship, was the cause of Petitioner being unable to protect his only-child from "real predators" and from becoming a "heroin-addict". Partly it's the "nature of the state law" itself. At the time of it's enactment, the 'State Registry law/requirement' was settled and plain. But then lawyers, & officials in opposition have debated the meaning of "terms" of the law/requirements that seemed clear years or even months before the Petitioner's "2012-Violation of Registration conviction" which in his case are violations of EX POST FACTO TIMMS vs. JOHNS, 700 F.Supp. 2d 764 (E.D.N.C.2010); UNITED STATE vs. YOUNG, 585 F.3d 199, 203-06 (5th.Cir. 2009); WEAVER vs. GRAHAM, 101 S.Ct. 960 at:964-65 (1981); (Referencing Pages:8-13, STATEMENT, supra). But common sense, is if OPPRESSIVE LAWS/REQUIREMENT(S) deprive a person(s)/a registrant(s) of liberty or property or even children, without cause or without good cause shown or "for just no reason at all" for such an intent to deprive a person/registrant/citizen of such "GOD" given rights and due process and constitutional rights and liberties then those 'Laws/Requirements' obviously need to be rethought and/or improvements be made. The legal controversies that arise out of 'Bexar County, Texas' and encompasses now, that have been stirring in the circuits but mainly in the 'Texas Supreme Court' have went beyond the standard problems of legal interpretation, these legal concerns also involve the QUIESTION of whether those on power in the 'Bexar County Justice System' & in 'Texas' are bound by ANY rules of law at all. The scope of policymakers in 'Texas', and the POWERS of this "Honorable United States Supreme Court" to weaken oppressive state laws that appeared to 'Texas' to be done; to water down a 'state regulation' or block its implementation; to contract an agency's power with a cut in its budget; to seize control of an issue where a vacum has been left, or to give qualified citizens relief. The ethics surrounding 'undue oppression' and "due process violations to human-dignity" and "the decision" to require 'Texas' to PROVIDE DUE PROCESS PROTECTIONS that require "some showing" or "a finding" that a Petitioner/Registrant' poses "some kind of threat" to the community or that a registrant is a "repeat or habitual sex offender" and even a separate determination that in the past a registrant constituted a continuing threat to society, for people/defendants/citizens that do not merit inclusion in the sex offender registration program; Petitioner does undertand that these may not be easy issues, but does believe they are worthy of serious debate and review by this "Honorable Federal Supreme Court". And what really troubles the

Petitioner is the process-or LACK OF PROCESS-by which 'Christopher W. Demartino', 'Jeffery Dew', 'Shannon Jones', the 'trial court judge' in the end of the state revocation proceedings (i.e.:county & state officials) and 'their' legislative allies so easily disposed of "legitimate opposing views". The sense that the rules of governing no longer apply in 'Bexar County', San Antonio, or in 'Texas', and that there are no fixed meanings or standards to which Petitioner could appeal in 'Texas'. It's as if those in power in 'Texas' have decided that "habeas corpus" and 'separation of powers' are niceties that only get in the way and complicate what is obvious (i.e.:the NEED to provide DUE PROCESS) or impede what is right (i.e.:the sanctity of life) and could therefore be disrigarded, or at least bent to "strong wills". The paradox, in this case, of couse, is that such disregard of the rules and manipulation of language to achive a particular outcome (i.e.:the continuation the Texas Sex offender Registry Scheme's provisions that are violations of the "due process" of the 'Texas' & "Federal" Constitutions) is precisely what the 'State's Attorney-Christopher W. Demartino', 'Jeffery Dew', 'Shannon Jones', and 'Attonrey Vincent Callahan' have all done to this point, to hinder or delay review of the legal concerns herein; and it is one the 'different variants' of the "SAME rationals" be-hind 'Pro-Registry Crusader-Patty Wetterling's' and 'John Walsh's' notion of the threat of "stranger danger" with lock-em up & throw-away-the-key excessed, damn the cost(s)...(???), and the notion of the 'Bexar County Elitist' barons who apparently control the legality that's enforced in the 'San Antonio' courts-of-law consistently abusing the legislative process for 'their' own gain (i.e.:see also EX PARTE GARCIA, 486 S.W. 3d 565, at Dissents (Tex.Crim.App.2016); & RICHARDS vs. CITY OF WEATHERFORD, 145 F.Supp. 2d 786, at:786, (N.D.Tex.2001)) (EMPHASIS ADDED); it is the basis for the discrediting and dishonoring of the 'Honorable Pat Prist' in 'Bexar County, Texas' for giving citizens their due process rights in the '80's/90's'; or the scorn heaped on the sad phrase "it depends on what the meaning of the word 'is' is"; and it is the basis of 'Christopher W. Demartino's' and 'Texas Attorney General's lawyer's broadsides against the Petitioner, the unlearned, the uneducated Pro-Se litigant(or)(s), that Texas has stigmatized without due process; (i.e.:those alleged high priests of political correctness, as it's been argued) who refuse to acknowledge any eternal truths or hierarchies of knowledge and indoctrinate 'Bexar County's youth with dangerous moral relativism, supra; and it is at the very heart of the "ineffective assistance of counsel assaults" on the 'Bexar County Criminal Courts' (and the Texas Justice System), which are the very reasons Petitioner will not be given fair review... that raises significant legal and public

policy issues that the "United States Supreme Court" must grant writ of certiorari for in this case with the highest of the Nation's Jurisprudence. Gaining control of the 'Texas Supreme Court' (see GARCIA, 486 S.W. 3d 565; 2016 Tex. Crim.App.; at DISSENT) has become the holy grail for a generation of 'oppressive elitists' who view the 'state court' as the last bastion of probation, pro-affirmative-action, prohomosexual, proregulation, (e.g., Christopher W. Demartino, Jeffery Dew, Shannon Jones, Texas Assistant Attorney General) have placed themselves above the law, basing 'their' OPINIONS not the "Constitution" or on the basis of any "evidence allegedly presented" in this case, but on the basis of the acceptability of the arguments on 'their' own whims and desired results, finding the sanctioning of the deprivation of certain due process rights and Federal Constitutional rights of 'Registered sex offenders' in 'Texas' who do not merit inclusion of the "state-sex offender registration program" (i.e.:in part thereof, or in whole of the requirements) with illigitimate and unconstitutional practice(s) by silent deviations from legal modes of procedure as if it consists more in sound than in substance (i.e.:a gradual depreciation of rights as depicted in the "STATEMENT", supra; & Petitioner's "MEMORANDUM IN SUPPORT" of his 28 U.S.C.§2254-PETITION), close and literal constructions of sex offender registry laws/requirements that do not exist in the 'state' or "Federal" constitutions, subverting the democratic process and perverting the "Founding Fathers'" original intent. This "Federal Supreme Court" has REQUIRED the courts to return to their 'proper role' in requiring "strict construtionists" to the 'federal branch', men and women who understand the difference between interpreting and making law in 'Texas', men and women who will stick to the original meaning of the "Founders'" words; Men and Women who will follow the rules. But this REQUIREMENT is "sadly" unfounded in 'Texas'.

With the utmost humility and respect, Petitioner beseeches this "Honorable United States Supreme Court" to be watchful for the constitutional rights of the Petitioner (i.e.:the citizen) against the stealthy encroachment thereon committed by the 'State of Texas', and declare the Texas sex offender registration provisions UNCONSTITUTIONAL because of "due process violations" and because of "Equal Protection Violation", and GRANT writ of certiorari.

Petitioner beseeches this "Honorable Court" to review these "requirements" in part, or in whole. Life for a 'registrant' that does not merit inclusion in the "Texas Sex offender Registry" imposes many burdens on those required to take part, this is obvious just in review of this case. In 'Texas', people on the sex offender registry (i.e.:No matter what level of risk) are impose still with other penalties for Petitioner restricting him from visiting parks or

barring him from living with his own child (e.g.,as was enforced on the Petitioner for No reason). indeed, it appears that No proposed sex offender registration law/requirement in 'Texas' has ever failed a freestanding, regular-order floor vote in the state's legislature (i.e.:to the best of Petitioner's Knowlege). What's more of a "concern for awareness", is that NO 'Texas' sex offender law that has ever been passed has ever been repealed, and No Texas sex offender registration law/requirement has ever been weakened in a substantial way EVEN WHEN STORIES EMERGE OF SERIOUS CONSEQUENCES FOR FORMER OFFENDER (e.g.:many registrants in 'Texas' have No place to live as a result of County, City, and state residency-restrictions; a FACT that evokes "little public sympathy" nor calls for reform, despite the FACT that forcing 'sex offenders' into homelessness (e.g.as Probation officers attempted to do to the Petitioners) makes' 'him' difficult to monitor and less likely to successfully reintegrate into society, and puts 'sex offenders' at increased risk themselves of recidivism (i.e.:as Bexar County Probation officers-Jeffery Dew & Shannon Jones, & 'state's Attorney-Christopher W. Demartino' very well Know). So now that Bexar County Probation makes Petitioner homeless, why not just lock-em-up and through-away the key (EMPHASIS ADDED).

Petitioner humbly asks, again, so why has 'Texas' not yet substantially implemented 'S.O.R.N.A.-requirements'? Maybe because of 'their' mismanagement of the "Federal Byrne Grant Founds"? The 'Texas-State Legislature' wants to make "unconstitutional laws" for "sex offender registration-requirements", but doesn't want to create 'PROTECTION' or 'Guidelines' and/or "remedies" for the SERIOUS QUONSEQUENCES that follow. It also seems that 'Texas', in this very complicated and very controversial "movement" of "sex offender registration laws & requirements", has also innovated a way to benefit from 'their' registrants by way of the current system and set of 'state' laws and requirements (see Pet.App. 6a) in place Now (i.e.:to financially oppres registrants to pay for implementing 'S.O.R.N.A.-requirements'? Speculativaly?); however, the "Bexar County System" in 'San Antonio, Texas', are OPPRESSING 'registrants' (and Petitioner for No reason) who are not 'pedophiles' nor 'homosexual perverts' neither 'sexually violent predators'. No one is suggesting 'Texas' to end the state sex offender registration either! For OBVIOUS reason, ending the reason, ending the 'Texas sex offender Registry' would be UNWISE; But Petitioner is humbly beseeching the "United States Supreme Court" to DECLARE the 'Texas sex offender Registration Provisions' (i.e.:in part or in whole) UNCONSTITUTIONAL because of "due process violation" and "Equal Protection violation" and COMPEL 'Texas-state Policymakers' to make "sensible improvements".

I. THE FIFTH CIRCUIT REASONING IS FLAWED; THE FIFTH CIRCUIT CLAIMS THAT PETITIONER DOES NOT REURGE HIS INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIM & DENIES PETITIONER'S

MOTION FOR CERTIFICATE OF APPEALABILITY FOR NOT MAKING THE REQUISITE SHOWING OF 28 U.S.C.§2253(c)(2) USING UNREASONABLE APPLICATION OF FEDERAL SUPREME COURT LAW WITH THE SAME TESTS FOUND IN TENNARD WHICH WAS REJECTED BY THE U.S. SUPREME COURT AND CONTRARY TO FEDERAL SUPREME COURT'S CLEARLY ESTABLISHED LAW SET FORTH IN THE REQUIREMENTS OF MILLER-EL VS. COCKERREL.

The Fifth Circuit

The Fifth Circuit held, in this case, that Petitioner "does not reurge his claim that his appellate counsel gave ineffective assistance by failing to file a second brief" and "therefore has abandoned this issue"; citing HUGHES vs. JOHNSON, 191 F.3d 607 (5TH.Cir.1999) (see Pet.App. 1a, page:2) (i.e.:on page:1 of the Fifth Circuit's opinion, the Fifth Circuit acknowledge that Petitioner complaints of the FACT; at:Ln.7,(2)). (EMPHASIS ADDED.

The Fifth Circuit further held, "To obtain a C.O.A., a movant [must] make a substantial showing of the denial of a constitutional right. 28 U.S.§2253(c)(2); see Slack v. McDaniel, 529 U.S. 433, 483 (2000). A Petitioner satisfies this standard by demostrating that jurist of reason could desagree with the district court's resolution of the constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further. Miller-El v. Cockrell, 527 U.S. 322,327 (2003). If a district court has rejected the claims on their merits, the movant [must] demostrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong; slack, 529 U.S. at 484; see also Miller-El, 537 U.S. at 338..." has not made the requisite showing. see slack, 529 U.S. at 484. Therefore, his motion for a C.O.A. is DENIED...". (see Pet.App. 1a, at page:2).

The requirements of MILLER-EL vs. COCKERELL is the controlling precedent. MILLER-EL is the rule in all circuits where the issue of a C.O.A. has arisen; see e.g., MILLER-EL, 123 S.Ct. 1029, at:1034 (2003); yet the Fifth Circuit, in this case, turn the tables dramatically against the Petitioner in context of habeas relief bacause of underlying issues of the SERIOUS CONSEQUENCES that resulted from the 'Texas Sex offender Registration Requirement' that allegedly allowed the sanctioning of unreasonable sex offender conditions-of-probation to be imposed onto Petitioner for No reason or good cause shown that violated his "due process rights" and 'state' & "Federal constitution rights" and did INTERFERE with his "rights as a parent" that caused his ONLY-CHILD-DAUGHTER to become a heroin-addict (see Pet.App. 6a, 6b, & 6c; AND Pet.App. 2d, page:3). The Fifth Circuit does not consider any of the foregoing (see Pet.App. 3a) to be a compelling enough "demonstration that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong, jurists could conclude the issues presented are adequate to deserve encouragement to

proceed further"; Id., 537 U.S. at:327 & 338; but does not consider "this reasoning" to be FLAWED, much less prejudicial. TENNARD vs. DRETKE, 542 U.S. 274, 159 L.Ed.2d 384, 124 S.Ct. 2562, at:2569 & 2573 (2004). The "United States Supreme Court" has REJECTED "this very reasining", held to deny the issue of a certificate of appealability (i.e.:C.O.A.) for the Petitioner's dismissed '§2254-PETITION'; to intention the controversial issues of the state-sex offender registry requirement(s) in 'Texas' that raises serious concerns and significant legal and/or public policy issues that No one wants to talk about; see TENNARD, supra.

A C.O.A. should issues if the applicant has "made a substantial showing of the denial of a constitutional right", 28 U.S.§2253(c)(2). In his 'Motion For C.O.A. & Brief In Support' Petitioner showed COMPELLING FACTS (see Pet.App. 3a) that demostrated reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong; SLACK vs. McDANIEL, 529 U.S. at 484, 120 S.Ct. 1595 (2003) (i.e.:citing TENNARD, S.Ct. at 2569 (2004)); see also Petitioner's "Motion For C.O.A. & Brief In Support"-FIFTH CIRCUIT No.19-50074. Despite paying lip service to the principles guiding issuance of a C.O.A., TENNARD vs. COCKRELL 284 F.3d at 594, it is inmistakable in this case that the 'Fifth Circuit's' analysis proceeded along a distinctly different tack when denying Petitioner's "motion for C.O.A. & brief" to issue C.O.A. in seeking fair review. The "U.S. Supreme Court" has held, that "the Fifth Circuit's [tests for coa] 'uniquely severe permanent handicap' and 'nexus' tests are incorrect... the [U.S. Supreme Court has]... reject[ed] them"; Id., 542 U.S. 274,124 S.Ct. at 2573 (2004). Should this "Honorable Federal Supreme Court" GRANT CERTIORARI and give the Petitioner fair review (i.e.:that Bexar County has went to the EXTREME in altering the verbatim record/COURT REPORTER'S RECORD for 9-25-2012 & gave false testimony) the "U.S. Supreme Court" will conclude, that Petitioner's probation from the beginning (i.e.:from March 18,2014) and his revocation & '10-year-sentence' is "void" or "illegal"; see EX PARTE RICH, 194 S.W. 3d 508, at 511 (Tex.Crim.App. 2006); CARLSEN vs. STATE, 645 S.W. 444,448 (Tex.Crim.App. 1983); and JACKSON vs. VIRGINIA, 443 U.S. 307, 318-319 (1974); and that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (i.e.:in that, statements made by the 'Probation officials' and 'state's attorney' that are out-of-place and just don't make sense in light of the record and circumstances surrounding every 'step' & 'stage' of the proceedings since the commencement of the "alleged-regular-probation"; and the "void" or "illegal" sentences of the 'March 18,2014', resentencing without-appointed-counsel onto amended-probation and the 'November 13,2014', revocation & 10-year-sentence) SLACK, 529 U.S. at 484, 120 S.Ct. 1595 (2003), (EMPHASIS ADDED); and that this case also presents

alarming concerns of significant legal and/or public policy issues in 'Texas' sex offender registry provisions and remand this case for further investigation- and - evidentary hearing.

The U.S. Supreme Court

STANDARD OF A.E.D.P.A., 28 U.S.C.§2253(c)(2)

CERTIFICATE OF APPEALABILITY REQUIRED BY THE A.E.D.P.A.

MILLER-EL VS. COCKRELL, 537 U.S. 322, 154 L.Ed 2d 931, 123 S.Ct. 1029(2003)

Petitioner now contends the district court's unreasonable application of the A.E.D.P.A. "statute of limitations" procedural default(s)/defense (i.e.:28 U.S.C.§§2241-2254 and or 'Personal Restraint Petition'). The A.E.D.P.A. "statute of limitations" is not jurisdictional; see DAY vs. DONOUGH, 547 U.S. 198, 164 L.Ed. 2d 376,126 S.Ct. 1675, at 168-84 (2006). (EMPHASIS ADDED. The "U.S. Supreme Court" will GRANT certiorari where the case presents an important question concerning the extent to which relief under 28 U.S.C.§§2254 & 2255 is available... A prisoner's claim is not required to be of constitutional dimension in order to be cognizable in an 28 U.S.C.§2255 collateral proceeding; citing DAVIS vs. UNITED STATES, 417 U.S. 333,94 S.Ct. 2298, 41 L.Ed. 2d 109, at 116-117 (1974). The grounds for relief under 28 U.S.C.§2255 are equivalent to those encompassed by 28 U.S.C.§2254; Id.,417 U.S. 333, 41 L.Ed. 2d at 118-119. Petitioner, in his §2254-PETITION & SUPPORTING MEMORANDUM (i.e.:and also demostrated in his motion for COA to the Fifth Circuit) shows proof of his revoction-lawyer's (i.e.:Keith Engelke) and his appellate-attorney's (i.e.:Vincent Callahan) unprofessional conduct that was so negligent or grossly negligent arising to the level of agregious attorney misconduct, and therefore warranted equitable tolling because of the ineffective assistance that was too rigid and offers of bad faith and divided loyalty. Petitioner renews contention, pursuant to PETTY vs. McCOTTER, 779 F.2d 299 (5TH.Cir. 1986) (i.e.:where Habeas Petition is allowed to be amended; Id., 779 F.2d at 302), that his 'revocation-attorney's' performance at sentencing and his 'appellate-attorney's' performance at both appeals (see Pet.App. 5b), both attorney's violated Petitioner's 'Sixth-Amendment' right to effective assistance of counsel. Petitioner argues that his appellate-counsel's failure to file a complete trial/revocation hearing VR/transcripts in both appeals prejudiced his "direct Appeal" and that there was insufficient proof to support revocation of the "void" or "illegal" probation sentence impose on him (i.e.:only falsified testimony from County & City officials, but No actual evidence, because Petitioner is a registered sex offender). The "U.S. Supreme Court" has addressed a number of situations in which an attorney's performance has been found deficient; see ENTSMINGER vs. IOWA, 386 U.S. 784,

750-51, 87 S.Ct. 1402, at 1403, 18 L.Ed 2d 501 (1967), holding counsel's waiver of petitioner's right to a full transcript (i.e.:that COURT REPORTER'S RECORD/VR for Sept.25,2012 was not provided) violated due process guarantees of adequate and effective review; see also MOORE vs. CARLTON, 74 F.3d 689, at 692-93 (6TH. Cir. 1996) in support. In HARDY vs. STATES, 375 U.S. 277, at 282,84 S.Ct. 424, at 428, 11 L.Ed. 2d 331 (1964); the "U.S. Supreme Court" held, that counsel's duty as advocate 'cannot be discharged' unless he has a transcript of testimony (i.e.:the 'Sept.25,2012', VR/COURT REPORTER'S RECORD that was NEVER presented at either of both direct appeals), and evidence presented, and jury charge. It should have been clear to the 'Fifth Circuit' and the lower-courts that failing to file a significant portion of the record in this case, ad hoc, on both "direct appeals" constituted deficient performance, when the sufficiency of the evidence used to revoke the Petitioner's (already "void" or "illegal") probation sentence is an issue ad hoc. Petitioner did reurge his claim of ineffective assistance of appellate counsel at every stage (i.e.:including the Fifth Circuit) but because he doesn't use the word "reurge(d)" (i.e.:Petitioner speculates) in his "motion & brief" to the 'Fifth Circuit'... he abandons the issue (???). Petitioner was under the impression that the Federal habeas court was a Court-of-error. Appellate-counsel ONLY filed a brief (i.e.:an ANDER'S BRIEF/NO ERROR BRIEF) (see Pet.App. 5b) which in substance said, without explanation, that the appeal (i.e.:in both appeals) was frivolous and without merit and wholly failed to call attention to or discuss any of the potential issues in the case, ad hoc, (i.e.:that even the State-habeas-court acknowledge; see Pet.App. 2b, Page-16, part:c); and the Petitioner did complain of these issues, inter alia, in his pro se appellant's brief on 2nd-direct appeal after revocation. Under ANDERS vs. CALIFORNIA, 386 U.S. 738,87 S.Ct. 1396 (1967); as reiterated in the "U.S. Supreme Court's" more recent decision in PENSON vs. OHIO, 109 S.Ct. 346 (1988), even if appellate counsel determines that the appeal is frivolous he must, inter alia, file "a brief referring to ["]anything["] in the record that might arguably support the appeal"; see also LOMBARD vs. LYNAUGH, 866 F.2d 1475, at 1480 (5TH.Cir. 1989). The Petitioner has been "REURGIN" his ineffective assistance of appellate-counsel claim, in his layman capacity, at every stage, but because he has to register as a sex offender, he is being discriminated on by the lower-courts in Bexar County, Texas and will not be given fair review in spite of the GOOD CAUSE Petitioner has shown pursuant to BRACY vs. GRAMLEY, 117 S.Ct. 1793 (1997). (EMPHASIS ADDED). The issue of the district court's "A.E.D.P.A.-Statute of Limitation-procedural default holding" being non-jurisdictional, does not mean that the 'U.S. district court' lacked jurisdiction over the issues complained of in Petitioner's petition, but rather that a federal habeas court may

review and uphold a federal claim previously denied by the 'state', even though the state corrective process was adequate for redressing the claim and even though the denial was on the merits; please see HOLLAND vs. FLORIDA, 560 U.S. 631,177 L.Ed. 2d 130,130 S.Ct. 2549 (2010) in support; see also BROWN vs. ALLEN, 344 U.S. 443,97 L.Ed. 469,73 S.Ct. 397 (1953). (EMPHASIS ADDED). With respect to the statutes, a statute of limitations can be tolled when principles of equity would Make its rigid application unfair; URCINOLI vs. CATHEL, 546 F.3d 269,272 (3RD.Cir. 2008). There are No bright RULES for Equitable Tolling and must be made on a case-by-case basis; BAGGET vs. BULLITT, 377 U.S. 360, 12 L.Ed. 2d 377,84 S.Ct. 1316 (1964); MUNCHINSKI vs. WILSON, 694 F.3d 308 (3RD.Cir.2012); see also PULLMAN vs. SWINT, 456 U.S. 273, at 287, 102 S.Ct. 1181 (1982). E.G., Petitioner also asserts, that the "STONE OPPORTUNITY" rule is also nonjurisdictional, but does not mean that the "Federal District Court" lacked jurisdiction over Petitioner's 'Fourth-Amendment' claim when he invoked the rule during the Federal-habeas-juncture, but rather that this jurisdiction was suppose to have been exercised, in addition to the violation of his 'Fourth-Amendment', when the "Federal District Court" learned that the 'State' had denied the 'state convict' (i.e.:Petitioner) an opportunity for a full and fair litigation of the claim throughout the short-served probation and the county's/state's questionable claims of evidence to allegedly support revocation (i.e.:that NEITHER took place at the Federal-habeas-juncture); STONE vs. POWELL, 428 U.S. 465, at 495 n.37, 96 S.Ct. 3037, 49 L.Ed. 2d 1067 (1976); see also KIMMELMAN vs. MORRISON, 477 U.S. 365, 106 S.Ct. 2574, 91 L.Ed 2d 305 (1986); and DAVIS vs. BLACKBURN, 803 F.2d 1371 (5TH.Cir. 1986). The "A.E.D.P.A.-statute of limitations procedural default" is prudential rather than jurisdictional; see Note, 13 Harv. C.R.-C.L.L. Rev. 521,599 (1978). (EMPHASIS ADDED). Petitioner is not time-barred and entitled to a full and fair Federal review.

The amendment to 28 U.S.C.§2254, enacted as part of the "A.E.D.P.A." circumscribe the 'Fifth Circuit Court' of Petitioner's claim and REQUIRED the 'Fifth Circuit Court of Appeals' limit analysis to the law as it was "clearly established" by "U.S. Supreme Court" precedents but unreasonably applies the principle to the facts of Petitioner's case in the issuance of a certificate of appealability (i.e.:WILLIAMS vs. TAYLOR, 120 S.Ct. 1495 (2000)); see MILLER-EL vs. COCKRELL, 123 S.Ct. 1029, at 1034 (2003).

In this case, ad hoc, as in STRICKLAND, Petitioner's claims stem from revocation-lawyer's (i.e.:Attorney Keith Engelke's) decision to limit the scope of 'his' investigations/effective assistance throughout the revocation proceedings by not objecting to the sudden FIRST AMENDED M.T.R. (Referencing Page:13-14, supra), by not bringing to the revocation-hearing-court's attention

the Petitioner's mental-health-issues & history (i.e.:BOUCHILLON vs. COLLINS, 907 F.2d 589, at 597 (5TH.Cir. 1990)).(Refering Pages:11-12, supra) (see Pet. App. 3a, Pages:27-32), and neither objects to 'State's Attorney-Demartino's breech of agreement to make No sentencing recommendation at sentencing (i.e.:see SANTOBELLO vs. NEW YORK, 404 U.S. 257 (1971); WIGGINS vs. SMITH, 123 S.Ct. 2527, at 2535; and STRICKLAND vs. WASHINGTON, 466 U.S. 668,at 673, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)); and then appellate-cousel submits a "NO ERROR BRIEF" that fell way below reasonable professional standards. STRICKLAND applies to sentencing mitigating factors not discovered and also an ineffective assistance of counsel claim. 'Revocation-Counsel's' decision not to expand 'his' investigation beyond the introduction of the FIRST AMENDED-M.T.R. that violated Petitioner's due process, and Knowing that Petitioner suffered from mental-health-issues, fell short of the professional standards that prevailed MARYLAND in '1963; see WIGGINS vs. SMITH, 539 U.S. 522,156 L.Ed 2d 471, 123 S.Ct. 2527, at 2536; in support. The mitigating evidence 'revocation-counsel-Keith Engelke' failed to discover and/or present in the case is POWERFULL! The Petitioner does have a HISTORY of mental-health-issues of "BIPOLAR SYNDROME" that the "U.S. Supreme Court" has declared relevant to voluntarieness of the plea of "true"; see WIGGINS, 123 S.Ct. at 2542 (2003). Given both the nature and the extent of the circumstances involved surrounding the case and Petitioner's mental-health-history prior to the rovocation hearings, the "U.S. Supreme Court" has found there to be a reasonable probability that a competent attorney, aware of this mental-health-history that is well documented, and further investigation after objecting to any of the potential issues, supra, would have introduced it at sentencing at the 'Nov.13,2014', revocation hearing in an admissible from. There were nonfrivolous issues which should have raised on the "direct appeal" and when 'appellate counsel-Vincent Callahan' only filed a brief which in substance said, without explanation, that the appeal was without merit and wholly failed to call attention to or discuss any of the potential issues, supra, Petitioner received ineffective assistance of counsel on appeal; see LOMBARD vs. LYNAUGH, F.2d 1475 (5TH.Cir. 1989).

DEFINING UNREASONABLE APPLICATION

Clearly established law as determinated by the "U.S. Supreme Court" refers to the holdings, as opposed to the dicta, of the Federal Supreme Court's decisions as of the time of the relevant 'Fifth Circuit of Appeals' decision (i.e.:WILLIAMS vs. TAYLOR, 529 U.S. 362,146 L.Ed 2d 382,120 S.Ct. 1495 (2000)). The Fifth Circuit was to look for the governing legal principle or pronciples set forth by the "U.S. Supreme Court" at the time the 'Court of Appeals for the Fifth Circuit' rendered 'its' decision (e.g.:LOCKYER vs. ANDRADE, 538

U.S. 63, 71-72; YARBOROUGH vs. ALVAREDO, 124 S.Ct. 2140, at 2147 (2004)) in PIPPIN vs. DRETKE, 434 F.3d 782 (5TH.Cir. 2005). (EMPHASIS ADDED). The "U.S. Supreme Court" offered up a guideline for the following test which has "two components" in determing whether a C.O.A. should issue where the petition was dismissed on procedural grounds; the "FIRST" one is directed at the underlying constitutional claim, and the "SECOND" one is directed at the district court's procedural holding. Each component is part of a "threshold inquiry"; SLACK, 120 S.Ct. 1599 (2000). From the begining Petitioner's March 18,2014,-community supervision-probation, revocation, and '10-year prison sentence' was "void" or "illegal" (see Pet.App. 3a; Alleged-Regular-Probation Conditions contrct Labeled As:EXHIBIT-F, Page-4). This is apparent from the RECORD, where Petitioner was coerced into signing the "Probation-Conditions-Contract, EXHIBIT-F" for the "second-time" on '3-18-2014', to give the "false-appearance" that the probation-conditions-contract was originally signed on 'Sept.25,2012'. Petitioner had originally REFUSED to sign "Pet.App. 3a, EXHIBIT-F" because the date on the probation-contract did not match the date of "void" or "illegal" resentencing (i.e.:March 18,2014), and WAS asked by the 'Supervision officer' that bears 'her' signature under his, "if he was in FEAR by signing the probation-contract"; Petitioner asked in reply, "what do you mean, you're not going to let me out of jail unless I sign that fraudulent-document?". The Supervision officer said, "No, you're not going to get out of jail". So Petitioner wrote "UNDER DURESS" and then signed the "EXHIBIT-F, Probation-conditions-contract" reluctantly. This defect rendered the probation, revocation, and '10-year-sentence' "void" or "illegal" and one not authorized by law; see EX parte RICH,194 S.W. 3d 508, at 511 (Tex.Crim.App. 2006) in support; see also U.S. vs. WHITE, 258 F.3d 374 (5TH.Cir. 2001); UNITED STATES vs. SCOTT, 987 F.2d 261 (5TH.Cir. 1993); & DOUGLAS vs. BUDER, 412 U.S. 430,432, 37 L.Ed.2d 52, 93 S.Ct. 2199,2200 (1973). (EMPHASIS ADDED). Even though Petitioner plead "true" at the 'Nov. 13,2014'. revocation hearing, the "U.S. Supreme Court" has conclude that under the circumstances in this very type of setting/situation the evidence was legally insufficient to prove the allegations under JACKSON vs. VIRGINIA, 443 U.S. at 318-319 (1974); ROBERSON vs. U.S., 901 F.2d 1475 (8th.Cir 1990); see also Fed.R.Crim.Proc.,Rule-11. 28 U.S.C.S.§2255, "provides that a prisoner in custody under a sentence of a...court may file a motion in the court which imposed the sentence to vacate or correct the sentence, on the grounds that the sentence was imposed in violation of the Constitution or laws of the United States.. or that the sentence is otherwise subject to collateral attack, is intended to afford... prisoners a remedy identical in scope in... habeas corpus...",citing DAVIS vs. UNITED STATES, 417 U.S. 333, at 343 (1974). Thus the

mischaracterization of the revocation of the Petitioner's being resentenced to probation on 'Mar.18,2014', and then the revocation of his probation on 'Nov. 13,2014', which brought upon his '10-year-sentence' that resulted in Petitioner being sentenced in violation of law and is a contention or issue that may be raised at any time; Id., 194 S.W. 3d 508 (Tex.Crim.App. 2006). When Petitioner was coeced into signing Pet.App.3a, EXHIBIT-F, he signed the "probation-contract" under dures; pleas see U.S. vs. WHITE, 258 F.3d 374 (5TH.Cir. 2001); & WILLIAM R. ANSON, Principles of the Law of Contracts 261-62 (Arthur L.Corbin ed., 3d Am.ed. 1919). Therefore, Petitioner's 'probation', and '10-year-sentence' is "void" and/or "illegal". So from the begining (i.e.:Mar.18,2014) the entire proceeding as a whole was "fudamentally unfair", see PASSMORE vs. ESTELLE, 607 F.2d 662 (5TH.Cir. 1979). Thus, Petitioner has satisfied the "FIRST COMPONENT" of SLACK, supra. The U.S. District Court's procedural holding, that "State court's denial of Petitioner's ineffective assistance of counsel claims was not an unreasonable application of clearly established federal law and Petitioner's due process claims are barred by applicable statute of limitations", is incorrect; Jurists of reason "could desagree" with the district court's resolution of the constitutional claims or jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. The issue of the "A.E.D.P.A.-Statute of Limitations" being nonjurisdictional, does not mean that the district court lacked jurisdiction over the issues complained of in Petitioner's petition, but rather that a federal habeas court may review and uphold a federal claim previously denied by the 'State', even though the 'state' corrective process was adequate for redressing the claim and even though the denial was on the merits; please see HOLLAND vs. FLORIDA, 560 U.S. 631,177 L.Ed.2d 130,130 S.Ct. 2549 (2010), in support, that jurists of reason could disagree with the district court's procedural holding and find them debatable or wrong. The district court's "A.E.D.P.A.-Statute of Limitations" holding/procedural default resolution is pridential rather than jurisdictional; see Note, 13 Harv. C.R.-C.L.L. Rev 521, 599 (1978). (EMPHASIS ADDED). Petitioner has met the "SECOND COMPONENT" and made SLACK'S requisite showing for the issuance of a C.O.A.,; Id., 529 U.S. at 484. Petitioner in citing the district court's holding that §2253(c)'s requirement of the issue of a C.O.A. "only issues" upon the "substantial showing of the denial of a constitutional right", the district court also contends that no appeal can be taken if the district court relies on procedural grounds to dismiss the petition. The "U.S. Supreme Court" has REJECTED this interpretation. The writ of habeas corpus play a vital role in protecting constitutional rights. In setting forth the preconditions for issuance of a C.O.A. under§2253(c), "Congress" expressed No intention to allow trial/revocation court procdural

error to bar vindication of substantial constitutional rights on appeal; SLACK, 120 S.Ct. 1595, at 1603. Petitioner "has met" the requirements of MILLER-EL vs. COCKRELL, 537 U.S. 322, 154 L.Ed.2d 941,123 S.Ct. 1029, at 1034 (2003); that "need only demonstrate a substantial showing of the denial of a constitutional right". The governing precendent.

Petitioner turns now to this case, ad hoc, before the "U.S. Supreme Court" and humbly asks if the district court's adjudication of the claim "involved an unreasonable application" of clearly established law, when it adopts the state court's findings, that Petitioner had not received ineffective assistance of counsel, or in its own holding that Petitioner did not make the requisite showing for COA to issue;§2254(d)(1)? When the district court denied Petitioner's habeas petition on procedural grounds, COA should have issued and an appeal of the district court's order should have been taken; SLACK, 120 S.Ct. at 1599. The term "unreasonable" is a common term in the legal world and accordingly, federal judges are familiar with its meaning; see WILLIAMS vs. TAYLOR, at 410,120 S.Ct. 1495, at 1520-21. Based on these principles, the "U.S. Supreme Court" should conclude that the district court's and the Court of Appeals-Fifth Circuit Court's application of clearly established U.S. Supreme Court law was unreasonable; see YARBOROUGH vs. ALVARADO, 541 U.S. 652,158 L.Ed.2d 938, 124 S.Ct. 2140, at 2149 (2004). (EMPHASIS ADDED).

Texas Supreme Court

STATE COURT DECISION IS CONTRARY
TO UNITED STATES SUPREME COURT

A habeas petitioner whose claims was adjudicated on the merits in 'state court' is not entitled to relief in federal court unless he meets the requirements of 28 U.S.C.§2254(d). Although the 'U.S. Magistrate Judge-Honorable Henry J. Bemporad' recited this standard in 'his' "MEMORANDUM OPINION AND ORDER" (see Pet.App. 2b, page:6), the 'U.S. District Court-Magistrate Judge' proceeds to evaluate Petitioner's claim de novo rather than through the lens of §2254 (d). Under §2254(d) it must be shown that state's habeas juncture was either contrary to, or an unreasonable application of "United States Supreme Court" clearly established precedents, or was based upon an unreasonable determination of the facts. The parties do not dispute the underlying facts of Petitioner's "issues of incompetence", or of 'revocation counsel' failing to object to the FIRST AMENDED-M.T.R. filed in violation of Petitioner's due process of NOTICE rights (i.e.:amongst other objections 'revocation Counsel-Keith Engelke' failed to make but also complained of herein), neither is there any dispute from the parties that revocation counsel-Keith Engelke' not conducting an "independent investigation" of Petitioners "BIPOLAR SYNDROME-Mental Health History" after

'counsel' had NOTICE of Petitioner's past hospitalizations prior to both the 'September 25,2012', and the "void" or "illegal" 'March 18,2012'," probation sentencings; an "independent investigation of Petitioner's troubled-mental health history that could have been introduced at the revocation sentencing on November 13,2014', (i.e.:see BOUCHILLON vs. COLLINS, 907 F.2d 589 (5TH.Cir.1990) which fell below reasonable professional standards (i.e.:counsel only puts the blame on the Petitioner); neither do parties dispute the underlying facts of Petitioner's 'appellate counsel-Vincent Callahan' falled to raise the issue of the unreasonable conditions of probation on "direct appeal" by-way-of "Tex.Code Crim.Proc. Article-11.072,§1" or a "merits brief" (see Pet.App. 2b, Page-16) which did constitute deficient performance, when the SUFFICIENCY OF THE EVIDENCE is an issue; see JACKSON vs. VIRGINIA, 443 U.S. 307, at:318-319 (1974), in support. (EMPHASIS ADDED). The Petitioner is therefore entitled to habeas realief provided in §2254(d); see PRICE vs. VINCENT, 123 S.Ct. 1848, at:1852-1853; in support.

FIRST, the "U.S. Supreme Court" has explained that a decision by a 'state court' is "contrary to" Federal Supreme Court's clearly established law if it applies a rule that contradicts the governing law set forth in U.S. Supreme Court cases" or if it confronts a set of facts that are materially indistinguishable from a decision of the "U.S. Supreme Court" and nevertheless arrives at a result different from the "U.S. Supreme Court" precedent' WILLIAMS vs. TAYLOR, 529 U.S. 362, 146 L.Ed.2d 389, 120 S.Ct. 1495,1496 (2000).

Nowhere did the 'Texas Supreme Court' correctly apply a legal standard set forth in "U.S. Supreme Court" cases. The U.S. District Court basically adopted the trial court's "findings of fact and conclusions of law" and adjudicated the case on the alleged-merits by 'United States District Judge-Honorable Xavier Rodriguez', and denied a certificate of appealability based on "MILLER-EL vs. COCKRELL, U.S. 322,335-36 (2003); and SLACK vs. McDANIEL, 529 U.S. 473,484 (2000); and ALEXANDER vs. JOHNSON, 211 F.3d 895,898 (5TH.Cir. 2000) (see Pet. App. 2a & 2b); and the Fifth Circuit wants to affirm the denial (see Pet.App. 1a & 7a), in which 'they' use an "unreasonable application" of the "governing precedent", supra, and base their opinions not on the constitution but the basis of the acceptability of the arguments on their own whims and desired results. The U.S. District Court thus made their decision based upon an unreasonable determination of the facts. Nor did the 'state court' deny confronting a set of facts materially indistinguishable from those presented in any of the "Supreme Court's" clearly established precedents. Petitioner has correctly applied the clearly established governing law set forth in "MILLER-EL vs. COCKRELL, 537 U.S. 322,154 L.Ed.2d 931,123 S.Ct. 1029, at :1034 (2003)", which is the

governing precedent.

SECOND, Petitioner can satisfy §2254(d) if he can demostrate that the 'Texas Supreme Court's' decision involved an unreasonable application of clearly established law; see PRICE vs. VINCENT, 538 U.S. 634,155 L.Ed.2d 877,123 S.Ct. 1848,1853 (2003) in support.

Here, ad hoc, the 'State Supreme Court' conclude 'their' decision based on the "findings of fact and conclusions of law" (see Pet.App. 2b, Page:5, Ln. 19-20) in which Petitioner contends that the court's finding was improperly made; JACKSON vs. VIRGINIA, 443 U.S. 307, at 318-319 (1974); and CARLSEN vs. STATE, 654 S.W. 2d 444, at 448 (Tex.Crim.App. 1983); and was based upon an unreasonable determination of the facts and an unreasonable application of "U.S. Supreme Court" clearly established law, where pursuant to EX parte RICH, 194 S.W. ed 508 (Tex.Crim. App. 2006) a "void" or "illegal" sentence was imposed onto Petitioner. A COA should have issued pursuant to the giverning precedent MILLER-EL vs. COCKRELL, 537 U.S. 322 (2003). Because Petitioner did meet the statutory requirements for habeas relief, the judgment of the district court should be reversed and sentence vacated; or sent back to allow evidentiary hearing to attempt to determine whether the conditions-of-probation imposed onto Petitioner was reasonable (i.e.:pursuant to the principles of UNITED STATES vs. LARA, 815 F.3d 605, at 609-10; UNITED STATES vs. SCOTT, 987 F.2d 261 (5TH.Cir. 1993); DAVIS vs. UNITED STATES, 131 S.Ct. 2419 (2011); & DOUGLAS vs. BUDER, 412 U.S. 430, at 432,37 L.Ed.2d 52, 93 S.Ct. 2199. 2200 (1973)) and whether he had deliberately failed to report to probation with wanton desregard or if the M.T.R.S. filed against Petitioner was harassment from Probation Department, and whether he was competent at the revocation hearing; and whether the Texas Sex offender Registry is unconstitutional, and thus, what was the correct sentence to have been imposed.

> II. PIPPIN vs. DRETKE, IS SOUND WHEREAS THE REASONING OF THE FIFTH CIRCUIT'S REJECTED "UNIQUELY SEVERE PERMANENT HANDICAP-TEST" OF TENNARD USED TO DENY PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY IS INCORRECT, UNFAIR AND INVITED FUTURE MISTAKES AND DISCOURAGEMENTS TO PROCEED FURTHER IN CONCERNS THAT RAISE SIGNIFICANT LEGAL AND/OR PUBLIC POLICY ISSUES IN TEXAS. C.O.A. MUST ISSUE.

STRICKLAND itself commands that the ultimate test for relief is not formalistic:

> In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of a particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.

STRICKLAND, 466 U.S. at 469,104 S.Ct. 674 (1984). Surely, such breakdown has occurred when PIPPIN vs. DRETKE aptly described it, "[the] court of appeals... [was suppose to]... limit its examination to a threshold inquiry into the underlying merit of... [Petitioner's]... claims"... "[a] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail"; Id., 434 F.3d 782, at 786 & 787 (2005). The 'Seventh Circuit' has, using the STRICKLAND-language quoted further above; ruled where defendant does assert that he was coerced into pleading guilty, does attempt to show that his plea was involuntary (see Pet.App. 3a,

EXHIBIT-F), shows that Attorney failed to acquire a formal evaluation of the defendant's mental-health-issues or the need for the alleged "sex offender sex addiction therapy treatment" (see Pet.Referencing Pages:11-12, of STATEMENT supra), and does state with specificity that his Attorney failed to investigate "mental-health-issues" that would have revealed defendant's prior multiple psychiatric hospitalization which preceded (i.e.:both; 'Sept.25,2012', & the "void" or "illegal" 'Mar.18,2014') probation sentences (i.e.:the very mental-health-issues Petitioner was receiving "S.S.I.-benefits" for) and shown cause for the reasonable probability of a different result or outcome at the conclusion of the 'Nov.13,2014', revocation hearing or less harsh sentence had there been further investigation, and that counsel's lack of investigation which fell below reasonable standards; cannot be said to have been effective; see LINDSEY vs. UNITED STATES, 2011 U.S. DIST. LEXIS 24346 (7th.Circuit) (i.e.:JAMES STEVEN LINDSEY was convicted of possessing child-porn & still received effective assistance of counsel; Petitioner in this case, ad hoc, is not convicted of any sexual-oriented-offense but because of a '20-year-old' conviction-to-date his rights to effective assistance where prejudiced for having to register as a sex offender); see also BOUCHILLON vs. COLLINS, 907 F.2d 589, at 597 (5TH.Cir. 1990); U.S. vs. KAUFFMAN, 103 F.3d 186, at 191 (3rd.Cir. 1997) in support of Petitioner's claims that he received ineffective assistance of counsel due to revocation-counsel failing to conduct independent investigation of Petitioner's mental-health-issues (i.e.:Bipolar Syndrome) that rendered his plea of 'TRUE' involuntary. WIGGINS vs. SMITH, 539 U.S. 522,156 L.Ed.2d 471,123 S.Ct. 2527, at 2535 (2003). If TENNARD'S rejected "UNIQUELY SEVERE PERMANENT HANDICAP-TEST" rather than PIPPIN VS. DRETKE, is to be the nationwide standard for 'certain classes' of offenders, counsel, at least at revocation hearing/sentencing hearings may just as well not conduct independent investigations the "U.S. Supreme Court" has declared to be relevant so not to prejudice his defense(s) with deficient performance. After all a sentencing hearing is the Guidelines Manual and a debate over its many procedural and constitutional claims and guaranteed rights Petitioner was to be afforded and for trial/revocation court to determine the proper sentence. That debate did not take place in this case, ad hoc. BEARDEN vs. GEORGIA, 461 U.S. 660,76 L.Ed.2d 221, 103 S,Ct. 2064 (1983).

The Petitioner's Plea of True in the '290th. District Court' Bexar County, Texas was involuntary. The Trial Court/Revocation Court denied the Petitioner fundamental Fairness when the Court ommitted critical M.H.M.R. and Supplemental Security Insurance/S.s.i.-Benefits notice of "Bexar County Central Medical Records" that gave a clear suggestion that he was incompetent to stand trial or endure the revocation proceedings. Revocation Counsel-Keith Engelke neither to the '290th.-Court's' attention Petitioner's mental-health-issue, only briefly alluded at the 'Nov.13,2014', revocation hearing that he "has a talent for upsetting everyone he comes into contact with". This act by revocation court denied Petitioner substantive Due Process and the trial/revocation court accepted the Plea of True and assessed punishment in violation of the "14TH.-Amendment of the U.S. Constitution". Petitioner's revocation-counsel was not acting as Counsel guaranteed by the "6TH.-Amendment of the U.S. Constitution" when he failed to properly

investigate the Medical Records or object to the unruly restoration of competence (i.e.:which restoration of competence only suddely occurred with false-reports against Petitioner of being uncooperative because he told the 'State's-Attorney' and the 'trial court' that he was not receiving the mental-health-treatment neither psychological evaluation he was suppose to be at the 'San Antonio State Hospital' for) determination on the issue of Petitioner's incompetency to stand trial/revocation, when the Petitioner has an ONGOING HISTORY of mental illness that is documented in the 'Bexar County' M.H.M.R.-Medical Records, in which Petitioner signed authorization to disclose this Health information for the purpose of legal proceedings. The ineffectiveness of the Petitioner's revocation-counsel DENIED him fundamental fairness in this proceeding and violated his "6TH.-Amendment Right" to a proper Defense. The 'state' alleged in the charging instrument the "FIRST AMENDED MOTION TO REVOKE (ADULT PROBATION)" that the Petitioner violated the terms and conditions... in the following particulars, to wit:... fail to report to the supervision officer in person weekly for the dates of 13th., 20th., & 26th., of October,2014, in violation of condition number five". (see Pet.App. 3a, EXHIBIT-F) & (see Pet.App. 2b; Pages: 20-21, Part:3.Notice). 'Evidence' and 'Witness statements' as well as 'voluntary statements' by the Petitioner established that he failed to report for the dates in question, but not with wanton disregard for the law & No where to the present date has it been shown that he was given proper-legal-notice of this obligation to report weekly (i.e.:when the customary oblibation for "Regular Probation" to report in once-a-month, even by-weekly for special-defendants) after he released from jail a second-time on the SAME "M.T.R.-BOND" pending the SAME revocation hearing, pursuant to TEX.CODE CRIM.PROC., Article-42A.506 &.42A.756 (see Pet., STATEMENT; Referencing Pages:11-13), after returning to the jail from the state hospital; but No such legal obligation to report to probation weekly for the weeks of '7-27-2014 throu 8-14-2014' his first-release from jail on the SAME "M.T.R.-BOND" pending the SAME revocation hearing (see Pet., STATEMENT, Referencing Page:11, Ln,-18) even existed. Petitioner was a M.H.M.R.-patient' with an extended mental history that he was receiving S.S.I.-Benefits for that the the '290th. District court' had notice of (see Pet., STATEMENT, Referencing Pages:11, Ln. 34 throu Page:12). So this was harassment/abuse of discretion that "gave rise to the Petitioner's conscience-shocking level"; COUNTY OF SACRAMENTO vs. LEWIS, 523 U.S. 833, at 849 (1998) (EMPHASIS ADDED). And the one attempt Petitioner made "of his own accord" to report to his 'probation officer-Jeffery Dew' (see Pet., STATEMENT, Referencing Pages:12-13) he was threatened with more incarceration if he did not leave, and being in FEAR of sheriff's Deputies' and city Police's mistreatment of him in the short-severed-probation fled for his safety. No one even after that time pursuant to Art.-42A.756, TEX.CODE CRIM.PROC. (see Pet.App. 6b) went to Petitioner's residence to give him legal-due process-notice of this "sudden obligation" to report-weekly to probation and there is NOTHING on the record with even Petitioner's signature indicating otherwise. Only false testimony/false statements (see Pet.App. 2b, Page:22).

Whenever recklessness or criminal negligence enteres into or is part or element of "any offense" or it is charged that the accused acted recklessly or with criminal negligence in the

commission of an offense, the charging instrument must allege with "Reasonable Certainty" the act relied upon (i.e.:deliberately not reporting to probation) to constitute 'recklessness' or 'criminal negligence', a 'culpable mental state' is required, even if the definition of the offense does not provide a 'mental state', the evidence and the acts by Petitioner will not allege with "certinty" the Petitioner committed violations to his probation or acted with culpable mental state in this revocation Petitioner is actually innocent and is entitled to an aquittal. The Petitioner's 'plea of True' is involuntary in violation of the Tex Code of Criminal Procedure Article-26.13(b), "No plea of guilty shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary. Competency and informal inquiry into competency, is reviewed for an abuse of discretion as to the totality of the facts surrounding a trial court's implied decision not to hold a competency inquiry; MOORE vs. STATE, 999 S.W. 2d 385,393 (Tex.Crim.App. 1999). A person is incompetent to stand trial/revocation if the person does not have (1) sufficient ability to consult with a persons lawyer with reasonable degree; or (2) a rational as well as factual understanding of the proceeding against the person; TEX.CODE CRIM.PROC. Article-46B.003(a)(2011); FULLER vs. STATE, 253 S.W. 2d 220,228 (Tex.Crim.App. 2008). A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence, TEX. CODE CRIM.PROC.Art.-46B.003(b)(2011). If evidence suggesting the defendant may be incompetent to stand trial comes to the attention of the trial court, the court on its own shall suggest that the defendant maybe incompetent to stand trial, TEX.CODE CRIM.PROC. Article-46B.004(b)(2011). On suggestion that the defendant maybe incompetent to stand trial the court shall determine by informal inquiry, whether there is some evidence from any credible source that would support a finding that the defendant mey be incompetent to stand trial, TEX.CODE CRIM.PROC. Article-46B.004(c)(2011). If after on informal inquiry, the trial court determines that evidence exists to support a finding of incompetency, the court shall order an examination to determine whether the defendant is incompetent to stand trial in a criminal case, TEX. CODE CRIM.PROC.Article-46B.005(a)(2011); SALAHUD-DIN vs. STATE, 206 S.W.3d 203, 208 (Tex.App.Corpus Christi-2006). The '290th. District Court of Bexar County failed to make a sufficient inquiry into the Petitioner's incompetence to stand trial/revocation before accepting his "Plea of True". Originally the inquiry into the Petitioner's incompetence was made; before the 'Mar.18,2014', resentencing onto retaliation-for-appealing amended-sex offender-probation; at a misdermeanor proceeding (see Pet.App. 3a, Page:27-31; but filed in Federal Court as:'28 of 80' throu '32 of 80', DOCUMENT-32) (see Pet.App. 3a, EXHIBIT-H). The TEXAS CODE of CRIMINAL PROCEDURE "prohibits" a trial court from accepting a Guilty Plea unless it appears that the defendant is mentally competent, TEX. CODE CRIM.PROC. Art.-26.13(b)(2007); the better practice is for the trial Court to INQUIRE into the mental competency of the defendant whether the issue

is raised or not; KUYAVA vs. STATE. 583 S.W.2d 627 (Tex.Crim.App. 1976). Because the "INQUIRY" come from another lower-court, neither did the 290th. District court further INQUIRE into the issue of Petitioner's mental health issues. The trial court in the present case erred and abuse its discretion by not conducting informal inquiry into the Petitioner's competency during the plea proceeding when the record reflected that he had an ONGOING history of mental illness as reflected in the Bexar County M.H.M.R. & central Medical Records that was signed authorizing disclosure of this Health information for legal proceedings. Attorney Keith Engelke possesses that document. Petitioner has been treated in Bexar County-M.H.M.R. By a list physicians (to the present day even) and has multiple diagnosis of Bipolar Syndrome Disorder, Reports having problems with Depression, Minimal Audorty Hellucinations, Reports social isolation due to paranoia. The Petitioner was hearing voices and taking psychoactive medication at the time he ENTERED the "plea of true" and trial counsel for the Petitioner had been informed of these events. Petitioner holds the revocation court in error, and in violation of his substantive due process Right to a fair trial/ revocation hearing; under TEX.CODE CRIM.PROC. Article-46B.004(c-1), a suggestion of incompetency is the "THERESHOLD REQUIREMENT" for an informal inquiry under section(c) of the Article and may consist soley of a representation from any credible source that the defendant may be incompetent to stand trial/revocation. As stated in Subsection(c-1) of Article-46B.004, the Legislature intended the 'Bexar County-M.H.M.R. & Central Medical Records' that was authorized for disclosure in the revocation proceedings suggests the THRESHOLD REQUIREMENT required by that Article,Subsection(c-1) goes further to state, an evidentary showing in not required to have a 'Bonafide' doubt about the incompetency of the defendant. As written by the legislature in this part of 46B.004(c-1) the 'bona fide doubt standard' in MONTOYA vs. STATE, 291 S.W.3d at 425, has been overruled and reinstates the "informal inquiry standard" in Subsection(c). The State may argue that the evidence in this case does not raise a 'bona fide doubt' to the Petitioner's competence; because he understands questions, and appeared to be coherent and alert, and he conferred with his Attorney; the legislature's changes to Article-46B.004(c-1) adhears to the "U.S. Supreme Court's" ruling in PATE vs. ROBINSON, 383 U.S. 375 (1966); in which that court held in that case: "the evidence raised a sufficient doubt as to the Respondent's competence to stand trial so that the Respondent was deprived of Due Process of Law under the "14TH.-Amendment" by the trial

court's failure to afford him a hearing on that issue; Id.,383 U.S. at 378-386. The conviction of a legally incompetent defendant violates Due Process; BISHOP vs. UNITED STATES, 350 U.S. 961. TEX.CODE CRIM.PROC., Article-46B.004 (c-1) states, a suggestion of incompetency is the THRESHOLD REQUIREMENT for an informal inquiry under Subsection(c) and may consist soley of a representation from any credible source that the defendant may be incompetent. under the suggestion requirement set forth in Article-46B.004(a) and (c-1) the Petitioner's revocation-counsel was under a professional obligation to investigate and establish this critical evidence of the Petitioner's incompetence before revocation. A counsel's actions are usually based on informed strategic choices made by the defendant on information supplied by the record, and what investigation decisions that are reasonable depends critically on such information, inquiring into counsel's conversations with a defendant may be critical to a proper assessment of counse's investigation decision. In UNITED STATES vs. BOLEGEG RAIN, 155 F.3d 1181, at 1188; that Circuit court held, of All the actors in a trial, defense counsel must have intimate association with the defendant, therefore the defendant is not only allowed to raise the competence issue, But because of the importance of the PROHIBITION of trying those who cannot understand proceedings against them he has a professional duty to do so when appropriate; VUGT vs. UNITED STATES, 88 F.3d 587,592 (8th.Cir. 1996). The failure of trial counsel to request a competency determination hearing where there is evidence raising a substantial doubt about a defendant's competence to stand trial/revocation constitutes ineffective assistance of counsel; see SPEEDY vs. WYRICK, 702 723,726 (8th.Cir. 1993). The American Bar Association Standards, which are a guide in determining reasonable professional behavior states; Defense Counsel should move for evaluation of the defendant's competence to stand trial whenever Counsel has a good faith doubt as the defendant's competence. The Petitioner's counsel's ommission of the credible evidence available to him before trial denied to Petitioner the RIGHT to a fair trial/fair revocation hearing. In STRICKLAND vs. WASHINGTON, 104 S.Ct. 2052 (1984); the Supreme Court held; As relating to '6TH.-Amendment' claims of ineffective assistance of counsel, that counsel's assistance was so defective as to require reversal of a conviction has two component:FIRST, the defendant must show that counsel's performance was deficient; this requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the '6TH.-Amendment'. SECOND, the defendant must show the deficient

performance prejudiced the defense; this requires showing that counsel's errors were so serious as to deprive the defendant a fair trial [fair revocation hearing], a trial whose result is unreliable. The Petitioner's trial counsel's failure to investigate the available record to expose the M.H.M.-R.A'S diagnosis of the Petitioner's BIPOLAR SYNDROME DISORDER and submit a MOTION in the '290th. District Court' for a competency determination before either revocation (see Pet.App. 3a; Page:27-31) in the felony court showed he was not functioning as counsel guaranteed the Petitioner under the '6TH.-Amendment', satisfies the "FIRST-Prong test" under STRICKLAND vs. WASHINGTON. The Petitioner's revocation counsel's unprofessional actions in the pre-trial/perliminary stage of his revocation hearing(s) DENIED him a fair revocation and fair proceedings and if not for the deficient performance by that counsel by allowing Petitioner to enter a 'Plea of True' in the '290TH. District Court' knowing the possibility of the Petitioner not being competent to stand trial/revocation hearing, if not for the acts, the 'revocation hearing' would have resulted in a fair trial/fair revocation hearing/fair proceedings whose outcome would have been different, this unprofessional performance satisfies "SECOND-Prong" of the STRICKLAND vs. WASHINGTON-Test and renders the Petitioner's trial counsel ineffective assistance of counsel in violation of the '6TH.-Amendment'. In UNITED STATES vs. CRONIC, 104 S.Ct. 2039 (1984); the Supreme Court held:"the most obvious of course is complete denial of counsel; the presumption that Counsel's assistance is essential, requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial, if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment Rights that makes the adversary process itself presumptively unreliable". If TENNARD'S "uniquely severe permanent handicap-test" stands, it outlasts the precedence issued by the Supreme Court to limit its examination to a threshold inquiry into the underlying merits of Petitioner's claims (i.e.:his mistreatment, by local law enforcement & Bexar County-State Judiciary controversy, for being a Registered sex offender) and effects determinations relating to virtually every issuance of a COA for certain class(es) of Petitioner's. The national standards issued by the Supreme Court in MILLER-EL was recognized in the 'Fifth Circuit' when it issued PIPPIN vs. DRETKE stating, a "claim can be dabatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail"; Id., 434 F.3d 782 at 787

(2005). It is apparent though that PIPPIN was not issued for a certain class of petitioners seeking justice (i.e.:registered sex offender). A remand for hearing in this case on the issues presented would promote such courtroom-wide vigilance, and where COA should have issued, not to mention the insistence of fairness which undergirds STRICKLAND. At such a hearing, the government should have the burden. Burdens should not shift because defense counsel fails in his job

CONCLUSION

The petitioner for a writ of certiorari should be granted.

Respectfully Submitted,

Luis Jaramillo

Luis Ray Jaramillo,Jr. Pro Se
T.D.C.J.#1966673
Coffield Unit
2661 FM 2054
Tennessee Colony,Tx 75884

Date: February 11, 2020.