

19-8026

|| NO. _____ ||

IN THE SUPREME COURT OF THE UNITED STATES

IN RE JONATHAN HAMPTON

ON PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 USCS § 2254 (A) (B) (i) (A) (b) (i) (ii)

PETITION FOR WRIT OF HABEAS CORPUS

JONATHAN ANDREW HAMPTON
APPEARING IN PROPRIA PERSONA
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QUESTIONS PRESENTED

1. DOES THE PETITIONER IN A HABEAS PROCEEDING, HAVE AN INHERENT CONSTITUTIONAL RIGHT TO BE ENLARGED UPON HIS PERSONAL RECOGNIZANCE IN THE INTEREST OF HIS LIBERTIES AND A SPEEDY RESOLUTION, WHEN THE CALIFORNIA SUPERIOR COURT (EXA) GRANTED THE PETITIONER A WRIT OF HABEAS CORPUS IN 2016, BASED UPON ITS FINDING THAT THERE EXISTS RECENT DEVELOPMENTS OF CALIFORNIA CASE LAW THAT JUSTIFIED ITS CONSIDERATION OF THE PETITION ON THE MERITS BY UNDERMINING THE ISSUE OF TIMELINESS, AND THEREBY REVERSING THE JUDGMENT, CONVICTION, AND SENTENCE OF SECOND DEGREE MURDER, FINDING THEM REVERSABLE UNDER CHAPMAN V. CALIFORNIA (1967) 386 U.S. 18 BECAUSE OF THE 2009 TRIAL COURT'S FAILURE TO SPA SPONTE INSTRUCT UPON CAL CRIM 570'S HEAT OF PASSION INSTRUCTION, AS IT RELATES TO THE MISDISCRIPTION OF THE ELEMENT OF THE OFFENSE CHARGED, THROUGH THE NEGATION OF MALICE. MULLANEY V. WILBUR (1975) 421 U.S. 684, 704; UNITED STATES V. GAUDIN (1995) 515 U.S. 522
2. IF THE PETITIONER'S GRANTED WRIT OF HABEAS CORPUS WAS PREDICATED UPON THE PROSECUTION'S FAILURE TO PROVE EVERY ELEMENT OF THE OFFENSE CHARGED, THUSLY, DOES THE PETITIONER HAVE SUBSTANTIAL LIBERTY INTERESTS THAT WERE/ARE TO BE PROTECTED BY THE 5TH AMENDMENT'S SAFEGUARD AGAINST DOUBLE JEOPARDY; THROUGHOUT 1) THE STATES' APPET REVERSING PETITIONER'S GRANTED WRIT OF HABEAS CORPUS (BECAUSE OF THE STATES' SUPREME COURT'S PUBLISHED AND REKNOWNED LACK OF CASE AUTHORITY ON THIS IMPORTANT FEDERAL QUESTION THAT CALIFORNIA HAS LEFT OPEN FOR OVER 20 YEARS.); 2) AND ARE THE PROCEDURAL IRREGULARITIES IDENTIFIED IN THE HISTORY OF THE PETITIONER'S ONGOING STATE HABEAS PROCEEDINGS, PARTICULARLY THE "ACT (S) OF GOVERNMENTAL OPPRESSION OF THE SORT AGAINST WHICH THE DOUBLE JEOPARDY CLAUSE WAS INTENDED TO PROTECT" 3). DOES AN ACQUITTAL ON THE ELEMENT OF THE CONVICTION BAR ANY PROCEEDINGS TO DETERMINE CULPABLE PUNISHMENT

- 1 3. DOES THE PETITIONER MEET ANY EXCEPTION TO THE AEDPA IN SEEKING
2 HABEAS RELIEF IN THIS COURT UNDER 28 USC § 2254 B) 1) a) b) i) ii)
3 LACK OF STATE'S CORRECTIVE PROCESS BY LACK OF CASE AUTHORITY ON THIS
4 IDENTIFIED FEDERAL QUESTION OF A HIGH REGARD AND IMPORTANCE. SINCE
5 THE PETITIONER WAS GRANTED REVIEW BY THE CALIFORNIA SUPREME COURT
6 ON 10/31/18 TRANSFERRING THE MATTER TO THE CALIFORNIA COURT OF APPEAL
7 WITH DIRECTIONS TO VACATE HIS 08/10/18 ORDER DENYING PETITION FOR WRIT
8 OF HABEAS CORPUS AND TO ISSUE AN ORDER DIRECTING THE RESPONDENT
9 TO SHOW CAUSE WHY PETITIONER SHOULD NOT BE ENTITLED TO RELIEF ON
10 HIS CLAIM OF APPELLATE I. A. C. (A claim not cognizable in a
11 §2254 proceeding) WHILE AVOIDING THE PRINCIPAL CONTENTION THAT THE
12 SUPREME COURT LEAVES OPEN... "DOES A TRIAL COURT EVER HAVE A DUTY
13 UNDER THE FEDERAL CONSTITUTION TO SUASPORTE INSTRUCT ON PASSION
14 PROVOCATION, WHERE WARRANTED BY EVIDENCE IN A NON CAPITAL CASE"
- 15 4. DOES THE FIFTH, SIXTH, FOURTEENTH AMENDMENTS TO THE CONSTITUTION CENTER UPON
16 THE PETITIONER RIGHTS THAT WOULD REQUIRE THE CALIFORNIA SUPERIOR COURT TO INSTRUCT
17 SUASPORTE ON PASSION PROVOCATION, IN A NON CAPITAL CASE.
- 18 5. AFTER THE STATE'S APPEAL, REVERSING THE GRANTED WRIT OF HABEAS
19 CORPUS, DOES THE PETITIONER HAVE A FEDERALLY SUBSTANTIAL LIBERTY
20 INTEREST THAT CAN BE ACQUIRED AND VINDICATED THROUGH A
21 42 USC § 1983 PROCEEDING RAISING "FEDERAL QUESTION JURISDICTION"
22 28 USC § 1331 IN THE DISTRICT COURT SEEKING INJUNCTIVE RELIEF
23 IN THE FORM OF MANDAMUS § 1651 b) TO ENJOIN THE CALIFORNIA
24 SUPREME COURT TO ASSUME JURISDICTION OF THE IMPORTANT FEDERAL
25 QUESTION LEFT OPEN FOR OVER 22 YEARS, THAT CAUSED DISCORD AND
26 CONFUSION IN THE HISTORY OF PETITIONERS STATE HABEAS PROCEEDINGS
27 UNDER WHICH PETITIONER BY HIS LONESOME PERSEVERES (SEE ATTACHED ¹⁶⁵¹ §2254
28 FILED IN THIS COURT SIMULTANEOUSLY RELIEF SAUGHT IN CONJUNCTION WITH ONE ANOTHER)

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PETITIONER HAS ATTACHED AN APPENDIX AND A MOTION TO
BE ADDRESSED BY THIS COURT UNDER S. CT. RULE 21, 28 USCS § 1651 AND
CLAIMING "GOOD CAUSE" IS SHOWN UNDER 28 USCS § 1657, ASSERTED Need For Emergency.

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURTS REVERED TREATISE

ARIZONA V. RUMSEY (1984) 467 U.S. 203, 211	22
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28	USCS § 1253	21
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CALIFORNIA CASE LAWS RELEVANT TO THE
QUESTIONS PRESENTED

IN RE HARRIS (1993) 5 CAL. 4TH 813, 828	28
PEOPLE V. BREVERMAN (1998) SUPRA, 19 CAL. 4TH 170 FN. 19, 189-190	
	15, 16, 17, 18, 19, 27, 29, 33, 34, 36
PEOPLE V. MILLBROOK (2014) 222 CAL. APP. 4TH 1222	
	16, 17, 26, 30, 33, 35, 36
PEOPLE V. MOYE (2009) 47 CAL. 4TH 537, 563, 564, 558 FN. 5	15, 27, 36
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PEOPLE V. WATSON (1956) [46 CAL 2d 818, 836 299 P. 2d. 243]	
	16, 27, 29, 30, 34, 36

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS
OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

YEAR-MO-DAY	PROCEEDINGS
2009 - 01 - 05	JURY TRIAL COMMENCED - SAC. CO. SUPERIOR CT. #07F01659
2009 - 02 - 10	JURY VERDICT DETERMINED - 2 nd DEGREE MURDER, GUN ENHANC.
2010 - 10 - 26	DIRECT APPEALS AFFIRMATION OF JUDGMENT C.O.A. 3 RD DIST CASE NO. C061681
2010 - 12 - 03	PETITION FOR REVIEW SUPREME CT. CA. #5188665
2011 - 12 - 01	PETITION FOR WRIT OF H.C. DENIAL SAC. CO. SUPERIOR CT. CASE NO. 11F06604
2012 - 01 - 12	PETITION FOR WRIT OF H.C. C.O.A. 3 RD DIST. #C070117
2012 - 02 - ??	SUPREME COURT OF CA. DENIAL ...??
2013 - 03 - 29	FEDERAL PETITION FOR WRIT OF H.C. EASTERN DIST. OF CA. CASE NO. 2:12-CN-00946-JKS
2013 - 03 - 29	JKS DENIED C.O.A.
2013 - 05 - 01	JKS DENIED MOTIONS FOR RECONSIDERATIONS

CURRENT RECORDS OF INTERVENING JUDGMENT(S)

2014 - 08 - 26	PETITION FOR WRIT OF H.C. IN SAC. CO. SUPERIOR CT BASED UPON TRIAL COURTS FAILURE TO SUVA SPONTE INSTRUCT ON PASSION/PROVOCATION-RELATES TO ELEMENT OF THE OFFENSE-FEDERAL ERROR- I.A.C AND NEW 2013 & 2014 CA. CASE LAW... CASE NO. 14HC0047.
2014 - 10 - 14 (EX B.)	HONORABLE CURTIS M. FIORINI - ORDER TO SHOW CAUSE
2016 - 02 - 10 (EXA.)	GRANTED WRIT OF HABEAS CORPUS FOUNDED UPON THE DETERMINATION THAT NEW CALIFORNIA CASE LAW EXPONES A TRIAL COURTS FAILURE TO SUVA-SPONTE INSTRUCT ON PASSION CONSTITUTES FEDERAL ERROR REVERSABLE UNDER <u>CHAPMAN V. CALIFORNIA</u> (1967) 386 U.S. 18

2016-03-15 THE STATE APPEALS C.O.A. 3RD DIST. C.O.A.#C081634

2017-06-09 (EX C) C.O.A GRANTS STATES APPEAL w/o ORAL ARGUMENT
AND VACATES THE ORDER.

2017-09-13 (EX D) C.O.A'S GRANTING THE STATES APPEAL REVERSES
THE WRIT OF H.C. AND REMANDS BACK TO HABEAS
COURT TO ADDRESS FACTUAL DEVELOPMENTS OF I.A.C
ACTIONS NOT PRECEDENTED IN CA. AND IS CONTRARY TO
PRECEDENT INVOLVING THE ADMINISTRATION OF THE GREAT
WRIT OF LIBERTY.

2017-12-15 PETITION FOR REVIEW SUPREME COURT CA.#S244105
ARGUING INJUSTICE TO THE REVERSAL OF THE WRIT

2018-03-12 (EX E) SUPERIOR COURT'S RESPONSE TO REMITTUR DENYING
PETITIONER'S I.A.C. CLAIMS - BARRED THE WHOLE
PETITION AS UNTIMELY CASE NO. 14HC00477

2018-04-26 PETITIONER FILED A TIMELY PETITION FOR WRIT OF
MANDATE IN THE C.O.A - CRIMINAL #C086970
WHERE PETITIONER SAUGHT WRIT TO COMPEL ACTION BY
COURT, WRIT TO COMPEL THE EXERCISE OF DISCRETION BY
COURT, AND WRIT TO CONTROL ABUSE OF DISCRETION
BY COURT.

2018-04-11 PETITIONER FILED HIS MOTION FOR RECONSIDERATION
BEFORE FIORINI CASE NO. 14HC00477

2018-05-03 COURT OF APPEAL DENIED PETITION FOR WRIT OF
MANDATE C.O.A. 3RD DIST. CASE NO. C086970

2018-07-25 (EX F) SAC. CO. SUPERIOR CT. (FIORINI) DENIED MOTION
FOR RECONSIDERATION WITHOUT CONVENING
PARTIES NO. 14HC00477

2018-05-21 PETITION FOR WRIT OF HC IN C.O.A.#C087151
2018-08-10 DENIAL OF PETITION IN C.O.A.#C087151
2018-08-20 PETITION FOR REVIEW FILED IN SUPREME COURT OF
CALIFORNIA *S250833
2018-10-31 (EX G.) WRIT OF REVIEW GRANTED *S250833
IGNORING UNDERLYING QUESTION - LEFT OPEN
IN PUBLISHED OPINIONS / DISSENTS FOR OVER 22
YEARS AND DIRECTED C.O.A. TO ADDRESS WHY
PETITIONER IS NOT TO BE ENTITLED TO RELIEF
UNDER CLAIM OF APPELLATE F.A.C.
(PLEASE REFER TO 3RD DIST. C.O.A. DOCKET
CASE NO. C087151 - ONGOING PROCEEDINGS)

CURRENT RECORDS OF PETITIONER / PLAINTIFFS COMMENCED
ACTION AGAINST THE STATE SEEKING DAMAGES AND INJUNCTIVE
RELIEF IN THE FORM OF MANDAMUS TO ENJOIN THE CALIFORNIA
SUPREME COURT TO ADDRESS THE FEDERAL QUESTION THAT THEY'VE
KNOWINGLY LEFT OPEN FOR OVER 22 YEARS.

2019-05-13 PETITIONER / PLAINTIFF FILED 42 USC § 1983 CIVIL RIGHTS
COMPLAINT AND PETITION FOR WRIT OF MANDAMUS
28 USC § 1651(A)(b) AND 28 USC § 1331 IN THE
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CA.
CASE NO. 2:19-CV-00851-JAM-DB
2019-06-19 MOTION FOR PRELIMINARY INJUNCTION FILED, WITH
ORDER TO SHOW CAUSE, T.R.O., RELIEF IN MANDAMUS
REQUESTED.
2019-07-23 U.S.D.C. ORDERED LEAVE TO PROCEED INFORMA PAPERIS
2019-07-24 (EX H) MAGISTRATES ORDER REFLECTING DISMISSAL OF COMPLAINT
W/ LEAVE TO AMEND IN 30 DAYS; RECOMMENDATION

1 OF DENIAL TO PRELIMINARY INJUNCTION AND T.R.O. AND
2 PETITION FOR WRIT OF HABEAS CORPUS
3 2019-08-05 PETITIONER / PLAINTIFF TIMELY FILED HIS OBJECTIONS TO MAGISTRATE
4 ORDER.
5 2019-08-13 PETITIONER / PLAINTIFF TIMELY FILED HIS AMENDED COMPLAINT
6 2019-08-20 PETITIONER / PLAINTIFF FILED EX PARTE APPLICATION FOR
7 INTERLOCUTORY RELIEF REQUESTING EXPEDITED REVIEW
8 2019-10-07 (EXH) U.S.D.C. JUDGE JOHN A. MENDEZ ORDER - ADOPTING
9 IN FULL THE FINDINGS AND RECOMMENDATIONS OF THE
10 MAGISTRATES ORDER.
11 2019-10-24 PETITIONER / PLAINTIFF TIMELY FILED "NOTICE OF APPEAL"
12 UNDER CIRCUIT RULE 3-3 "PRELIMINARY INJUNCTION APPEAL"
13 2019-10-31 PETITIONER / PLAINTIFF TIMELY FILED APPLICATION FOR RELIEF
14 FROM JUDGMENT PURSUANT TO F.R.C.P. RULE 60 (b)(1)(b)
15 AND RULE 52 (a)(1)(5); FILED F.R.A.P. RULE 8'S
16 MOTION FOR STAY AND INJUNCTION PENDING APPEAL;
17 FILED APPLICATION FOR JUDICIAL NOTICE FED. R. EVID
18 201 (b)
19 2019-12-02 FILED NOTICE OF REMOVAL OF CRIMINAL PROSECUTION
20 28 USC § 1455 (a)(b)(c) AND § 1443 (1) AND § 1331
21 2019-12-04 MAGISTRATES ORDER REFLECTING RECOMMENDATION THAT
22 AMENDED COMPLAINT BE DISMISSED.
23 2019-12-17 PETITIONER / PLAINTIFF MAILED OUT OBJECTIONS TO MAGISTRATES
24 ORDER

25
26 PROCEEDINGS IN ACTION STILL ON-GOING PRISONER / PLAINTIFF
27 HAS YET TO PASS SCREENING PHASE OF COMPLAINT AND
28 LAWFULLY STATE HIS CLAIM AGAINST DEFENDANTS.

CURRENT RECORDS OF PETITIONER/PLAINTIFFS COMMENCED
"PRELIMINARY INJUNCTION APPEAL" IN ACTION AGAINST THE STATE
SEEKING DAMAGES AND INJUNCTIVE RELIEF IN THE FORM OF
MANDAMUS TO ENJOIN THE CALIFORNIA SUPREME COURT TO
ADDRESS AN IMPORTANT FEDERAL QUESTION, WHOS IN ACTION HAS
CAUSED DISCORD AND CONFUSION IN PETITIONER/PLAINTIFFS ONGOING
STATE HABEAS PROCEEDINGS. CA. SUPREME CTS #S250833 ;
3RD DIST. CA. C.O.A. # C087151 ; SAC. CO. SUPERIOR CT # 14 HC00477

2019-10-29	U.S.D.C. FILED "NOTICE OF APPEAL"
2019-11-04	UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED PETITIONER/PLAINTIFFS "PRELIMINARY INJUNCTION APPEAL" UNDER CIRCUIT RULE 3-3 CASE NO. 19-17240
2019-11-07	U.S.C.A. ORDERED - BRIEFING SCHEDUAL
2019-11-17	APPELLANT MAILED / FILED "EMERGENCY MOTION" CIR. R. 2.13 . "JUDICIAL NOTICE" FED. RULES EVID. 201 (b) . "EXPEDITED HEARING" CIR. RULE 27-12 . "PRIORITY" CIR. RULE 34.3 (3)(5)(2) . "INJUNCTION PENDING APPEAL" FRAP 8 . "RELEASE OF PRISONER ON HIS OWN RECOGNIZANCE" FRAP 23
2019-11-17	1 APPELLANT MAILED / FILED "APPELLANTS BRIEF"
2019-11-25	APPELLANT MAILED / FILED "PETITION FOR WRIT OF MANDAMUS" UNDER FRAP RULE 21 AND 28 USCS §1651(A)(B) THE ALL WRITS ACT . "APPENDED TABLE OF EXHIBITS A TO E"
2019-11-29	USCA FILED CASE NO. 19-73047 TO . "PETITION FOR WRIT OF MANDAMUS"
2019-12-26	USCA ORDERED LEAVE TO PROCEED INFORMA PANDECTIS

2019-12-02

APPELLANT MAILED/FILED "PETITION FOR INITIAL
HEARING ENBANC"

2019-12-03 (EX F)

USCA ORDERED HOLDING APPEAL CASE NO. 19-17240 IN ABSENCE PENDING U.S.D.C. RESOLUTION
OF PENDING POST JUDGMENT MOTIONS FRAP (4)(A)(4)

2019-12-10

APPELLANT MAILED/FILED "APPLICATION FOR THE COURT
TO SUSPEND FRAP RULE (4)(A)(4) AND PROCEED
UNDER FRAP RULE 2.

2019-12-17

APPELLANT MAILED/FILED "APPLICATION FOR LEAVE TO
FILE SECOND §2254 PETITION SEEKING GATEWAY
CERTIFICATION TO FILE."

2019-12-17 (EX J)

USCA ORDERED APPELLANTS PETITION FOR
WRIT OF MANDAMUS CASE NO. 19-73047
DENIED

2019-12-20

USCA FILED APPELLANTS APPLICATION FOR LEAVE
TO FILE SECOND §2254 PETITION AS CASE NO. 19-73256
19-73256 SHORT TITLE JONATHAN HAMPTON V.
RAYMOND MADDEN.

2020-02-06 (EX K)

USCA. ORDERED PETITIONER APPLICATION FOR
§2254 (B) RELIEF TO BE DENIED.

COMMENCED FILINGS IN THE UNITED STATES SUPREME COURT

2020-03-

APPLICATION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS

UNDER 28 USCS §2254(B) AND S.C.T. RULE 20.4

APPLICATION FOR EXTRAORDINARY WRIT OF MANDAMUS

UNDER 28 USCS §1651(A)(B) & §1331 AND S.C.T. RULE 20.1

1 STATEMENT OF THE BASIS FOR JURISDICTION

2 THE PETITIONER SEEKS FROM THIS COURT ITS ISSUANCE OF AN EXTRAORDINARY
3 WRIT OF HABEAS CORPUS.

4 THE PROVISIONS OF THE SUPREME COURT RULE 20.4, RULE 10 (a)(b)(c)
5 AND THE IDENTIFIED PROCEDURAL IRREGULARITIES IN THE RECENT HISTORY OF
6 PETITIONER'S ONGOING STATE HABEAS PROCEEDINGS PROVIDE THIS COURT WITH
7 AN EXTRAORDINARY OPPORTUNITY TO EXERCISE ITS SUPERVISORY POWER, AND COMPEL
8 THE CALIFORNIA SUPREME COURT TO ADDRESS AN IMPORTANT FEDERAL QUESTION THAT
9 THEY'VE PUBLICLY LEFT OPEN FOR OVER 22 YEARS. (SEE ATTACHED § 1651(A)(B) PETITION)

10 PETITION IS FILED UNDER SUPREME COURT RULE 11

11 THE PETITIONER HAS FILED HIS § 2254 (B)(i)(ii) AND § 1651(A)(B) PETITIONS
12 WITHIN THE NINTH CIRCUIT AND WERE DENIED , AND HIS "PRELIMINARY INJUNCTION
13 APPEAL" CASE NO. 19-2740 IS ALSO STAYED WITHIN THE NINTH CIRCUIT, CONCERNING
14 HIS § 1983 COMPLAINT, PENDING A DECISION FROM THE DISTRICT COURT OVER THE PLAINTIFFS
15 MOTION FOR RECONSIDERATION, INJUNCTIVE RELIEF IN THE FORM OF MANDAMUS § 1651(b)
16 UPON THE CALIFORNIA SUPREME COURT.

17 ALTHOUGH THIS § 2254(B) PETITION FOR WRIT OF HABEAS CORPUS AND THE
18 § 1651(A) PETITION ARE BROUGHT BEFORE THIS COURT IN TWO SEPERATE
19 APPLICATIONS PETITIONER PLAINTIFF SEEKS TO INVOLVE EXPEDITED REVIEW
20 FROM THIS COURT CLAIMING THE CASE WITHOIDS SUCH IMPERATIVE PUBLIC IMPORTANCE
21 AS TO JUSTIFY DEVIATION FROM NORMAL APPELLATE PRACTICE AND TO REQUIRE
22 IMMEDIATE DETERMINATION IN THIS COURT BECAUSE OF HIS "ONGOING STATE
23 HABEAS COURT PROCEEDINGS THAT PRESENTS AN ADEQUATE OPPORTUNITY FOR THE
24 FEDERAL COURTS TO ENJOIN THE CALIFORNIA SUPREME COURT TO PROVIDE ITS
25 CASE AUTHORITY AND ADDRESS ITS LOWER COURTS STATE OF CONFUSION AND
26 DISCORD WITH CONFORMITY OF THIS IMPORTANT FEDERAL QUESTION IDENTIFIED
27 IN BOTH PETITIONERS' § 2254(B)(i)(ii) PETITION AND HIS § 1983 CIVIL ACTION
28 SEEKING REDRESS AND INJUNCTIVE RELIEF § 1651(A)(B) FROM THE FEDERAL COURTS.

1 THE U.S.C.A. DENIED PETITIONER'S WRIT OF MANDAMUS CASE NO. 19-73047 ON
2 DECEMBER 17, 2019 WHERE PETITIONER REQUESTED THE USCA TO ORDER THE U.S.D.C.
3 TO GRANT THE PETITION FOR WRIT OF MANDAMUS AS A FORM OF IMMEDIATE RELIEF TO HIS
4 §1983 CIVIL RIGHTS COMPLAINT, §1331.

5 THE U.S.D.C. DENIED THE PETITION FOR WRIT OF MANDAMUS 2:19-cv-00851-JAM-OB
6 SEEKING TO ENJOIN THE CALIFORNIA SUPREME COURT ON OCTOBER 7, 2019.

7 THE CALIFORNIA SUPREME COURT ENTERED HIS ORDER GRANTING REVIEW IN CASE
8 NO. S250833 ON OCTOBER 31, 2018 WITHOUT ADDRESSING THE FEDERAL QUESTION.

9 REASONS FOR NOT MAKING APPLICATION FOR

10 §2254 RELIEF IN U.S.D.C.

11 PETITIONER/PRAINTER WAS UNAWARE AT THE TIME OF FILING ON MAY 13, 2019 THAT
12 IN HIS §1983 ACTION HE CAN NOT REQUEST HIS IMMEDIATE HABEAS RELEASE AND THROUGH
13 A §2254 PROCEEDING HE CAN NOT REQUEST A MANDAMUS UPON THE CALIFORNIA SUPREME
14 COURT.

15 FROM DECEMBER 27, 2018 THROUGH FEBRUARY 2019 THE PETITIONER WAS WITHOUT
16 HIS PERSONAL PROPERTY AND HAD NO ACCESS TO HIS LEGAL WORK NOR WAS HE AWARE
17 OF A STATUTORY WRIT OF CERTIORARI UPON THE STATE'S HIGHEST COURT. (CAN PROVIDE DOCUMENTS)

18 PETITIONER RESPECTFULLY REQUESTS RELIEF FROM ANY DEFAULT HE MAY FACE.

19 EXHAUSTED ALL AVAILABLE REMEDIES IN STATE

20 THE PETITIONER HAS PROVIDED TO THIS COURT THE DETAILED SPECIFICATIONS ON PAGES
21 THROUGH OF THIS PETITION TO SHOW HIS EXHAUSTIVE EFFORTS IN SEEKING HABEAS
22 RELIEF IN THE STATE COURTS ON THE UNDERLYING CLAIM OF THE TRIAL COURTS FAILURE
23 TO INSTRUCT SUA SPONTE ON PASSION / PROVOCATION, AS IT RELATES TO THE MISDESCRIPTION
24 OF THE ELEMENT OF THE OFFENSE THAT CONSTITUTES FEDERAL VIOLATIONS OF DUE PROCESS,
25 AS MUCH TO EXPERIENCE DRASTIC IRREGULARITIES CREATING EXTRA ORDINARY
26 CIRCUMSTANCES REVEALED IN THE HISTORY OF HIS STATE HABEAS PROCEEDINGS.

27 ONLY TO CONCLUDE THAT THE CALIFORNIA SUPREME COURT'S PUBLIC RELUCTANCE AND
28 INACTION HAS BECOME THE CAUSE OF ACTION OF PETITIONER / PLAINTIFFS ONGOING INJURIES

1 DEPRIVATIONS OF LIBERTY THAT ACCRUES TO THE PETITIONER PLAINTIFF AT THE RAPID
2 INCREASE OF AN HOURLY ACCRUAL RATE.

3 THE PETITIONER SEEKS TO SHOW THIS COURT THAT EXCEPTIONAL
4 CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURTS
5 DISCRETIONARY POWERS BY DELINEATING CALIFORNIA'S
6 RELUCTANCE TO ADDRESS AND PUBLISHED INTENTIONAL
7 RESERVATION OF SETTING THIS IMPORTANT FEDERAL
8 QUESTION SPECIFICALLY AWAITING A CASE THAT PROPERLY
9 RESERVED THE CONTENTION OF FEDERAL CONSTITUTIONAL
10 ERROR IN ITS LOWER COURTS. A TASK PETITIONER HOLDS TRUE TO.

11 THE CALIFORNIA SUPREME COURTS INACTION ON ADDRESSING THE IMPORTANT FEDERAL
12 QUESTION AND RENDERING TO ITS LOWER COURTS THEIR PUBLICLY ANTICIPATED CASE
13 AUTHORITY ON "WHETHER TRIAL COURTS EVER HAVE A DUTY UNDER THE FEDERAL
14 CONSTITUTION TO JVA SPONTE INSTRUCT ON PASSION / PROVOCATION, AS IT RELATES TO
15 AN ELEMENT OF THE OFFENSE CHARGED, WHERE WARRANTED BY EVIDENCE IN A
16 NON-CAPITOL CASE." CREATES EXCEPTIONAL CIRCUMSTANCES FOR THIS COURT TO CONSIDER.

17 THE CALIFORNIA SUPREME COURT HAS CREATED THE STATES LACK OF CORRECTIVE
18 PROCESS FOR THE PETITIONER TO ATTAIN HIS RELIEF ON THIS SPECIFIED CLAIM OF
19 FEDERAL ERROR, BY ITS RESERVATION OF THE QUESTION FOR OVER 22 YEARS.
20 PETITIONERS ONGOING HABEAS CASE PRESENTS AN ADEQUATE OPPORTUNITY TO ADDRESS
21 THE FEDERAL QUESTION BECAUSE HE PRESERVED THE FEDERAL CONTENTION IN HIS CASE,
22 AND NO OTHER REMEDY SATISFACTORY TO FEDERAL LAW CAN BE OBTAINED
23 FROM ANY OTHER COURT.

24 IT IS NOTORIOUSLY RENOWNED WITHIN CALIFORNIA'S LOWER COURTS THAT THE
25 PROPER ANALYSIS FOR THE INSTRUCTIONAL ERRORS PREJUDICE IS CHAPMAN V. CALIFORNIA
26 (1967) 386 U.S. 18, 24 [37 L.ed 2nd 705, 87 S.Ct. 924] "REQUIRING REVERSAL UNLESS IT APPEARS
27 BEYOND A REASONABLE DOUBT THAT THE ERROR DID NOT CONTRIBUTE TO THE VERDICT." THE
28 ORIGIN OF THIS CONCLUSION DERIVES FROM THE CA. SUPREME COURTS OWN JUSTICE KENNARD

1 IN PEOPLE V BREVERMAN (1998) SUPRA, 19 CAL. 4TH @ P 170 FN 19 AND PEOPLE V. MOYE (2009)
2 47 CAL. 4TH 537 563, 564 WHERE SHE RECOUNTED AS FOLLOWS:

3 " MY DISSENTING OPINION IN BREVERMAN EXPLAINED: GIVEN THE MANNER IN WHICH
4 CALIFORNIA HAS STRUCTURED THE RELATIONSHIP BETWEEN MURDER AND VOLUNTARY MANSLAUGHTER

5 THE COMPLETE DEFINITION OF MALICE IS THE INTENT TO KILL OF THE INTENT TO DO A DANGEROUS
6 ACT WITH CONSCIOUS DISREGARD OF ITS DANGER PLUS THE ABSENCE OF BOTH HEAT OF
7 PASSION AND UNREASONABLE SELF-DEFENSE WHERE THERE IS SUFFICIENT EVIDENCE OF HEAT
8 OF PASSION TO SUPPORT A VOLUNTARY MANSLAUGHTER VERDICT, MURDER INSTRUCTIONS
9 THAT FAIL TO INFORM THE JURY IT MAY NOT FIND THE DEFENDANT GUILTY OF MURDER
10 IF HEAT OF PASSION IS PRESENT ARE INCOMPLETE INSTRUCTIONS ON THE ELEMENT
11 OF MALICE." BREVERMAN SUPRA, 19 CAL. 4TH @ P. 189-90 (DIS OPN. = KENNARD, J.) SUCH A
12 FAILURE TO INSTRUCT, I CONCLUDED, IS "FEDERAL CONSTITUTIONAL ERROR" (ID @ P 194).

13 BECAUSE IT GIVES THE JURY AN INCOMPLETE DEFINITION OF MALICE, WHICH IS AN ELEMENT
14 OF THE ^{CRIME} CHARGED OF MURDER.

15 JUSTICE KENNARD FURTHER EXPLAINED IN HER OPINION IN MOYE: "THE
16 MAJORITY IN BREVERMAN SAW NO NEED TO RESPOND TO MY DISSENT BECAUSE ~~THE~~
17 ACCORDING TO THE MAJORITY, THE THEORY UNDERLYING MY DISSENTING OPINION HAD
18 NOT BEEN RAISED BY THE DEFENDANT EITHER IN THE COURT OF APPEAL OR THE
19 COURT. (BREVERMAN, SUPRA, 19 CAL. 4TH @ P 170 FN 19) [OBSERVING THAT "THE ISSUES PRESENTED BY SUCH A
20 CLAIM MUST PROPERLY AWAIT A CASE IN WHICH THEY HAVE BEEN CLEARLY RAISED AND FULLY BRIEFED"]
21 (ID @ P. 189-190) (DIS OPN OF KENNARD, J.) [ARGUING THAT THE INSTRUCTIONAL ERROR VIOLATED THE
22 FEDERAL CONSTITUTION FOR THIS REASON] RELYING ON MURPHY V. WILBUR (1975) 421 U.S. 684
23 704 [44 L.ED. 2D 508, 95 S.Ct. 1881] IN WHICH THE UNITED STATES SUPREME COURT HELD
24 THAT FEDERAL DUE PROCESS REQUIRES THE PROSECUTION TO PROVE BEYOND A REASONABLE
25 DOUBT THE ABSENCE OF THE HEAT OF PASSION ON SUDDEN PROVOCATION WHEN THE
26 ISSUE IS PROPERLY PRESENTED IN A HOMICIDE CASE."

27 THE CALIFORNIA SUPREME COURT HAS SUBSEQUENTLY REAFFIRMED THAT THE ISSUE
28 REMAINS OPEN (SEE MOYE, SUPRA, 47 CAL. 4TH @ P 558 FN 5) [DECLINING TO DECIDE THE

1 THE ISSUE BECAUSE THE DEFENDANT HAD NOT PROPERLY PRESERVED THE CLAIM OF FEDERAL
2 CONSTITUTIONAL ERROR.] A TASK HAMPTON SURMOUNTED BEFORE THEM TWICE.

3 THE APPELLANT HAMPTON HAS PROPERLY PRESERVED THE CLAIMS FROM HIS HABEAS
4 COURT'S INITIAL GRANT OF HIS WRIT OF HABEAS CORPUS BASED UPON THE COURT'S FINDING

5 THAT THE CONVICTION, JUDGMENT, AND SENTENCE MUST BE REVERSED UNDER CHAPMAN.
6 AND ALSO NOTING THAT OTHER CASES HAVE FOUND THE ERROR REVERSABLE EVEN UNDER
7 THE LESS STRINGENT STATE'S STANDARD OF REVERSABILITY, PEOPLE V. WATSON (1956) [46 Cal
8 2d 818, 836, [299 P.2d. 243] WHICH REQUIRES REVERSAL ONLY IF THERE IS A REASONABLE
9 PROBABILITY THAT THE ERROR CONTRIBUTED TO THE VERDICT, "ULTIMATELY, WE NEED NOT DECIDE
10 THE DIFFICULT ISSUE WHETHER THE ERROR HERE VIOLATES THE FEDERAL CONSTITUTION AND SHOULD BE
11 EVALUATED UNDER CHAPMAN, SUPRA, 386 U.S. 18 BECAUSE WE CONCLUDE THAT THE ERROR
12 WAS PREJUDICIAL EVEN UNDER THE LESS STRINGENT WATSON STANDARD." PEOPLE V. MILLBROOK
13 MILLBROOK (2014) 222 Cal. App. 4th 1222. THE MILLBROOK COURT FACED DIFFICULTY BECAUSE
14 OF THE SUPREME COURT'S LACK OF CASE AUTHORITY ON THIS IMPORTANT ISSUE.

15 III. THE CALIFORNIA SUPREME COURT'S HOLDING IN THE BREVERMAN
16 MAJORITY'S OPINION AND THEIR EXTENSIVE RELUCTANCE TO ADDRESS
17 THE ISSUE NOW SUBJUDICE, IS HINGED UPON THE UNITED STATES
18 SUPREME COURT'S RULING IN BECK V. ALABAMA (1980) 447 U.S. 625
19 [65 LEd.2d 392, 100 S.Ct. 2382] RESERVING JUDGMENT ON "WHETHER THE
20 DUE PROCESS CLAUSE WOULD REQUIRE THE GIVING OF [LESSER INCLUDED OFFENSE]
21 INSTRUCTIONS IN A NON CAPITAL CASE" Id. at 688 F.N.7 AND THEIR HOLDING
22 IN MULLANEY V. WYOMING (1975) 421 U.S. 684, 714, AFFIRMING THAT QUESTION
23 OVER THE LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER BASED
24 UPON THE THEORY OF HEAT OF PASSION.

25 IN PEOPLE V. BREVERMAN (1978) SUPRA, 19 CAL. 4TH AT P. 1418, 49, 115 THE CALIFORNIA
26 SUPREME COURT "APPLIED THE WATSON STANDARD TO ASSESS THE TRIAL COURT'S FAILURE TO
27 GIVE SUA SPONTE A HEAT OF PASSION INSTRUCTION IN A NON CAPITAL CASE. [CITATION]
28 IN BROAD LANGUAGE, THE COURT "REJECTED" ANY IMPLICATION THAT THE ALLEGED ERROR

1 AT ISSUE IN THIS CASE - THE FAILURE TO INSTRUCT SUA SPONTE ON AN UNCHARGED
2 LESSER INCLUDED OFFENSE, OR ANY ASPECT THEREOF - IS ONE WHICH ARISES UNDER THE
3 UNITED STATES CONSTITUTION." (id. at p. 165). IT OBSERVED THAT "THE UNITED STATES
4 SUPREME COURT HAS EXPRESSLY REFRAINED FROM RECOGNIZING A FEDERAL CONSTITUTIONAL
5 RIGHT TO INSTRUCTIONS ON LESSER INCLUDED OFFENSES IN NON CAPITOL CASES" (id. at p. 165
6 - 166 fn. 14) IN TWO CASES IN WHICH THE DEFENDANTS HAD REQUESTED SUCH INSTRUCTIONS
7 OUR SUPREME COURT EXPLAINED THAT IN ONE OF THOSE CASES, BECK V. ALABAMA (1980) 447
8 U.S. 625 THE UNITED STATES SUPREME COURT "ACKNOWLEDGED THAT IN PARTICULAR
9 CIRCUMSTANCES THE DENIAL OF INSTRUCTIONS ON LESSER INCLUDED OFFENSES IN A CAPITOL
10 CASE WOULD VIOLATE THE FEDERAL CONSTITUTION" (BREVERMAN AT P. 166), BUT OUR
11 SUPREME COURT POINTED OUT THAT SUBSEQUENT DECISIONS OMITTED BECK AND
12 SUGGESTED THE UNITED STATES SUPREME COURTS] RELUCTANCE TO FORMULATE ANY
13 GENERAL CONSTITUTIONAL RIGHT TO INSTRUCTIONS ON LESSER OFFENSES. (BREVERMAN
14 AT P. 166) OUR SUPREME COURT CONCLUDED THAT "THE HIGH COURTS DECISION; LEAVE
15 SUBSTANTIAL DOUBT THAT THE FEDERAL CONSTITUTION CONFERS ANY RIGHT TO LESSER
16 INCLUDED OFFENSE INSTRUCTIONS IN NON CAPITOL CASES" AND "PROVIDE NO BASIS
17 WHATEVER FOR A CONCLUSION THAT THE FEDERAL CHARTER WOULD REQUIRE SUCH
18 INSTRUCTIONS, AS DOES CALIFORNIA ON THE COURT'S OWN MOTION. (BREVERMAN,
19 AT P. 168) ACCORDINGLY, THE BREVERMAN COURT "AFFIRMED" THAT THE RULE REQUIRING
20 SUA SPONTE INSTRUCTIONS ON ALL LESSER NECESSARILY INCLUDED OFFENSES SUPPORTED
21 BY THE EVIDENCE DERIVES EXCLUSIVELY FROM CALIFORNIA LAW" (id. at p. 164)
22 PEOPLE V. MILLBROOK (2014) SUPRA, 222 CAL APP 4TH 1122.

23 III. WHEN THE CASE AUTHORITY OF THE OPENED QUESTION IN
24 CALIFORNIA CONCERNING WHETHER TRIAL COURTS HAVE A FEDERAL DUTY
25 TO SUA SPONTE INSTRUCT UPON PASSION / PROVOCATION WHERE WITHHELD
26 BY THE EVIDENCE IN A NON-CAPITOL CASE SHOULD BE DISTINGUISHED
27 BY UNITED STATES V. GILADIN SIS U.S. 506, 510, 512, 514, 520 (1995)
28 CONTRARY TO THE CALIFORNIA SUPREME COURTS MAJORITY

1 HOLDING IN BREVERMAN THAT USED BECK V. ALABAMA (1960)
2 447 U.S. 675 [65 LEd 392, 100 S.Ct. 2382] WHICH COVERS A BROAD
3 SCOPE OF LESSER INCLUDED OFFENSES IN CAPITAL CASES, NOT
4 THE PARTICULAR INSTRUCTION THAT IMPLICATES THE PROSECUTION'S
5 BURDEN OF PROOF, UPON THE ELEMENT OF THE OFFENSE
6 CHARGE, WHICH IS CATEGORICALLY DIFFERENT FROM A FAILURE TO
7 INSTRUCT ON ALTERNATIVE THEORIES.

8 FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE SECTION 31.3 IS
9 COMPRISED OF THIS COURT'S OPINIONS THAT "DESIGNATES THE RIGHTS LISTED
10 BELOW (IN THAT SECTION) AS "STRUCTURAL" CONSTITUTIONAL RIGHTS THAT ARE
11 "SO BASIC TO A FAIR TRIAL THAT THEIR INFRACTION CAN NEVER BE
12 TREATED AS HARMLESS ERROR," OR AS SO PRONE TO PREJUDICE, WHEN
13 VIOLATED, THAT PREJUDICE ALREADY HAS BEEN PROVED OR SHOULD BE
14 PRESUMED" CITING CHAPMAN V. CALIFORNIA 386 U.S. 18, 23 (1967)

15 UNDER WHICH, ITS SUBSECTION (8) STATES: "THE RIGHT TO
16 "A JURY VERDICT WITHIN THE MEANING OF THE SIXTH AMENDMENT," WHICH, IN
17 LIGHT OF THE 5TH AMENDMENT REQUIREMENT OF PROOF BEYOND A REASONABLE
18 DOUBT, IS THE RIGHT TO "A JURY VERDICT OF GUILT BEYOND A REASONABLE
19 DOUBT, (CITING NEDER V. UNITED STATES, SUPRA, 527 U.S. at 8 "DENIAL OF PUBLIC
20 TRIAL" IS "STRUCTURAL [ERROR] AND IS THUS SUBJECT TO AUTOMATIC REVERSAL") SEE
21 SULLIVAN V. LOUISIANA 508 U.S. 275, 279-80 (1993) THIS RIGHT INCLUDES:

22 (a) THE FULL PROTECTION OF THE REASONABLE DOUBT STANDARD AT TRIAL
23 FULMINATE, SUPRA, 499 U.S. at 291; IN RE WINSHIP 397 U.S. 358 (1970)
24 INCLUDING THE RIGHT TO A JURY INSTRUCTION ON THE STATE'S BURDEN TO PROVE
25 ALL ELEMENTS OF ALL CHARGES BEYOND A REASONABLE DOUBT. CITING
26 FULMINATE, SUPRA, 499 U.S. at 291; JACKSON V. VIRGINIA 443 (1979); LANIGAN
27 V. MALONEY 853 (1st Cir. 1986) AND UNITED STATES V. GANDIN, 515 U.S. 506, 510-
28 512, 514, 520 (1995) (5TH AND 6TH AMENDMENTS REQUIRE CRIMINAL CONVICTIONS TO REST

1 UPON A JURY DETERMINATION THAT THE DEFENDANT IS GUILTY OF EVERY ELEMENT OF THE
2 CRIME WITH WHICH HE IS CHARGED BEYOND A REASONABLE DOUBT" (FN omitted)
3 ' AND GIVE A CRIMINAL DEFENDANT THE RIGHT TO DEMAND [INSTRUCTIONS REQUIRING]
4 THAT A JURY FIND HIM GUILTY OF ALL ELEMENTS OF THE CRIME WITH WHICH HE IS CHARGED
5 ... UNITED STATES V. GAUDIN, 28 F.3d 943, 951 (9TH CIR. 1994), AFF'D 515 U.S. 506 (1995)
6 (UNCONSTITUTIONAL WITHDRAWAL FROM JURY OF QUESTION WHETHER GOVERNMENT PROVED
7 CRITICAL ELEMENT OF OFFENSE "CAN NOT BE HARMLESS") Cf. UNITED STATES V.
8 GAUDIN, SUPRA 515 U.S. at 523/526 (REHNQUIST, CJ, CONCURRING) [FAILURE TO INSTRUCT
9 JURY TO CONSIDER WHETHER GOVERNMENT PROVED ONE ELEMENT OF OFFENSE BEYOND
10 REASONABLE DOUBT WAS "STRUCTURAL AND PLAIN" ERROR UNDER CIRCUMSTANCES OF
11 CASE BUT MIGHT BE "HARMLESS" UNDER OTHER CIRCUMSTANCES: "COURT TODAY HAS
12 NO OCCASION TO REVIEW THE COURT OF APPEALS' CONCLUSION THAT THE CONSTITUTIONAL
13 ERROR HERE CAN NOT BE HARMLESS")

14 THE TRIAL COURT'S FAILURE TO PROVIDE THE INSTRUCTION IN QUESTION
15 DILUTED THE PROTECTION AFFORDED TO THE PETITIONER / PLAINTIFF BY THE
16 REASONABLE DOUBT STANDARD. AND THE STATE'S CONTINUAL APPROACH TO
17 HIS ONGOING STATE'S HABEAS PROCEEDINGS TREATING SUCH ERROR AS
18 UNIMPORTANT TO OVERLOOK THE PRINCIPAL CONTENTION LEFT OPEN IN
19 CALIFORNIA FOR OVER 22 YEARS IS AN UNFORTUNATE ANOMALY FROM
20 THIS COURT'S HOLDINGS OVER THE STRUCTURAL AND PLAIN ERROR THAT
21 CAN NOT BE CONSIDERED HARMLESS... BREVERMAN MUST BE TRUMPED
22 BY THE CALIFORNIA SUPREME COURT'S NEW ASSESSMENT IN HAMPTON.
23 AND CAN ONLY BE VINDICATED BY THIS COURT'S EXERCISING OF
24 ITS DISCRETIONARY AND SUPERVISORY POWERS. BECAUSE THE 9TH
25 CIRCUIT C.O.A. HAS MOST RECENTLY DENIED PETITIONER / PLAINTIFFS APPLICATION
26 TO FILE HIS SECOND § 2254 ON FEB. 6TH, 2020 WITHOUT ADDRESSING
27 HIS CLAIMS FOR EXCEPTIONS TO THE PROCEDURAL BAR. i.e. "ACTUAL
28 INNOCENCE MCGINNIS V. PERKINS 569 U.S. 363 (2013).

ACTUAL INNOCENCE IS PETITIONERS GATEWAY

THE U.S. CA FAILED TO ADDRESS PETITIONER'S CLAIM THAT ACTUAL INNOCENCE IS PETITIONER'S GATEWAY TO THE PROSECUTOR BAR. MCQUIGGIN V. PERKINS 569 U.S. 383 (2013) ON FEBRUARY 10, 2009 IN SAC. CO. SUPERIOR COURTS CASE NO. 07FO1659 A JURY'S DETERMINATION RENDERED A VERDICT BY A PROCESS DEEMED FEDERALLY INVALID AND DEFECTIVE UNDER MILLANEY V. WILBUR (1975) U.S. THE JUDGMENT, CONVICTION AND SENTENCE WAS FINALLY REVERSED EXACTLY 7 YEARS TO DATE ON FEBRUARY 10, 2016 BY THE SAME COURT IN IN RE JONATHAN HAMPTON ON H.C. SAC. CO. CASE NO. 14HC00477 WHERE PETITIONER WAS GRANTED A WRIT OF HABEAS CORPUS BASED UPON THE COURT'S FINDINGS OF NEW DEVELOPMENTS IN CA. CASE LAW THAT EFFECTS PETITIONER'S CASE THE HABEAS COURT FOUND THAT THE TRIAL COURT FAILED TO SUASPONTE INSTRUCT ON HEAT OF PASSION AND VIOLATED PETITIONER'S FEDERAL RIGHTS TO DUE PROCESS, AND THE PROSECUTION FAILED TO PROVE EVERY ELEMENT OF THE OFFENSE CHARGED, FINDING THAT THE CONVICTION IS NON RELIABLE UNDER CHADMAN V. CALIFORNIA (1967) 386 U.S. 18 AND PETITIONER MAY BE INNOCENT OF MURDER, BECAUSE PASSION NEGATES MALICE.

STATUTORY PROVISION BELIEVED TO CONFER ON THIS COURT JURISDICTION TO GRANT THE WRIT

28 USC § 2241(c)(3); 28 USC § 2254(A)(B)(i)(a)(b)(i)(ii); THE PETITIONER IS IN CUSTODY IN VIOLATION OF THE U.S. CONSTITUTION, LAWS, AND TREATIES OF THE U.S. AND THERE IS AN IDENTIFIED LACK OF CALIFORNIA SUPREME COURTS CASE AUTHORITY THAT STILL PREVENTS THE PETITIONER TO MEET WITH AN EFFECTIVE MEANS OR CORRECTIVE PROCESS THAT CAN PROTECT HIS FEDERAL RIGHTS.

28 USC § 2243 EMPOWERS THIS COURT TO ISSUE A WRIT OF HABEAS CORPUS EXPARTE AND UNDER THE CONTEXT OF AN EXPEDITED REVIEW (SEE EXHIBIT BACK)
28 USC § 1331 DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION OF ALL CIVIL ACTIONS ARISING UNDER THE CONSTITUTION, LAWS, OR TREATY OF THE U.S. 28 USC § 1257 STATE LAW REPUGNANT TO U.S. CONSTITUTION AND LAWS.

28 USC § 1651 A) THE SUPREME COURT AND ALL COURTS ESTABLISHED BY
ACT OF CONGRESS MAY ISSUE ALL WRITS NECESSARY OR APPROPRIATE IN AID
OF THEIR RESPECTIVE JURISDICTIONS AND AGREEABLE TO THE USAGES AND
PRINCIPLES OF LAW.

28 USC § 1253 EXCEPT AS OTHERWISE PROVIDED BY LAW, ANY PARTY MAY APPEAL
TO THE SUPREME COURT FROM AN ORDER DENYING, AFTER NOTICE AND HEARING, AN
INTERLOCUTORY OR PERMANENT INJUNCTION IN ANY CIVIL ACTION ... TO BE HEARD AND
DETERMINED BY A DISTRICT COURT OF THREE JUDGES.

CONSTITUTIONAL PROVISIONS, TREATISE, AND REGULATIONS INVOLVED IN THIS CASE

THE BILL OF RIGHTS AND AMENDMENTS TO THE U.S. CONSTITUTION

"... NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT
IN JEOPARDY OF LIFE OR LIMB; NOR SHALL 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;..." AMENDMENT 5 (IN RELEVANT PART)

"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY
AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE
CRIME SHALL HAVE BEEN COMMITTED, ... WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED
BY LAW, COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE
THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE. AMENDMENT 6 (IN RELEVANT PART)

"... NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE
THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR
SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY,
WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS
JURISDICTION THE EQUAL PROTECTION OF THE LAWS." AMENDMENT 14 (IN RELEVANT PART)

NEW INTERVENING JUDGMENT

MAGWOOD V. PATTERSON, 561 U.S. 320 (2010)

1 "FEDERAL DUE PROCESS REQUIRES THE PROSECUTION TO PROVE BEYOND A
2 REASONABLE DOUBT THE ABSENCE OF THE HEAT OF PASSION ON SUDDEN PROVOCATION
3 WHEN THE ISSUE IS PROPERLY PRESENTED IN A HOMICIDE CASE." MULLANEY V. WILBUR
4 (1975) 421 U.S. 684, 704 [44 LED 2d 508, 95 S.Ct. 1881]

5 "5TH AND 6TH AMENDMENTS REQUIRE CRIMINAL CONVICTIONS TO REST UPON A JURY
6 DETERMINATION THAT THE DEFENDANT IS GUILTY OF EVERY ELEMENT OF THE ^{CRIME} OFFENSE WITH
7 WHICH HE IS CHARGED, BEYOND A REASONABLE DOUBT" (FOOTNOTE OMITTED) AND GIVE "A
8 CRIMINAL DEFENDANT THE RIGHT TO DEMAND [INSTRUCTIONS REQUIRING] THAT A JURY FIND
9 HIM GUILTY OF ALL ELEMENTS OF THE CRIME WITH WHICH HE IS CHARGED." "UNCONSTITUTIONAL
10 WITHDRAWAL FROM JURY OF QUESTION WHETHER GOVERNMENT PROVED CRITICAL ELEMENT OF
11 OFFENSE 'CAN NOT BE HARMLESS' UNITED STATES V. GARDIN 515 U.S. 506, 510, 511, 512, 520
12 (1995) @523, 526 (REHNQUIST, CJ CONCURRING) (FAILURE TO INSTRUCT JURY TO CONSIDER
13 WHETHER GOVERNMENT PROVED ONE ELEMENT OF OFFENSE BEYOND A REASONABLE DOUBT
14 WAS "STRUCTURAL AND PLAIN" ERROR "UNDER THE CIRCUMSTANCES OF CASE BUT MIGHT BE
15 "HARMLESS" UNDER OTHER CIRCUMSTANCES" @ 523, 526.

16 "THIS COURT HAS PREVIOUSLY HELD THAT A JUDICIAL ACQUITTAL PREMISED UPON A
17 "MISINSTRUCTION" OF A CRIMINAL STATUTE IS AN "ACQUITTAL ON THE MERITS THAT
18 BARS RETRIAL" ARIZONA V. RUMSEY 467 U.S. 203, 211, 104 S.Ct. 2305, 81 L.ED 2d
19 164 (1984)

20 "WE GRANTED CERTIORARI TO RESOLVE THE DISAGREEMENT AMONG THE STATE
21 AND FEDERAL COURTS ON THE QUESTION WHETHER RETRIAL IS BARRED WHEN A TRIAL
22 COURT GRANTS AN ACQUITTAL BECAUSE THE PROSECUTION FAILED TO PROVE AN
23 "ELEMENT OF THE OFFENSE THAT, IN ACTUALITY, [IT DID NOT HAVE TO PROVE] HE NOW
24 REVERSE." EVANS V. MICHIGAN (2013) 568 U.S. 813

25 "A JUDGMENT OF ACQUITTAL, WHETHER BASED ON A JURY VERDICT OF NOT GUILTY
26 OR ON A RULING BY THE COURT THAT THE EVIDENCE IS INSUFFICIENT TO CONVICT
27 MAY NOT BE APPEALED AND TERMINATES THE PROSECUTION WHEN A SECOND
28 TRIAL WOULD BE NECESSITATED BY A REVERSAL." UNITED STATES V. SCOTT (1978)

1 437 U.S. 82

2 "A DEFENDANT IS ACQUITTED ONLY WHEN" THE RULING OF THE JUDGE, WHATEVER ITS
3 LABEL, ACTUALLY PRESENTS A RESOLUTION IN THE DEFENDANT'S FAVOR, CORRECT OR NOT, OF
4 SOME OR ALL OF THE FACTUAL ELEMENTS OF THE OFFENSE CHARGED, "MARTIN LINEN,
5 SUPRA, 430 U.S., at 571, 97 S.Ct., at 1355. WHERE THE COURT, BEFORE THE JURY RETURNS THE
6 VERDICT, ENTERS A JUDGMENT OF ACQUITTAL... APPEAL WILL BE BARRED ONLY WHEN" IT IS
7 PLAIN THAT THE DISTRICT COURT... EVALUATED THE GOVERNMENT'S EVIDENCE AND DETERMINED
8 THAT IT WAS LEGALLY INSUFFICIENT TO SUSTAIN A CONVICTION." 430 U.S., at 572, 97 S.Ct.
9 at 1355.

10 "THE COURT REAFFIRMS THE MOST FUNDAMENTAL RULE IN THE HISTORY OF DOUBLE JEOPARDY
11 JURISPRUDENCE: THAT JUDGMENTS OF ACQUITTAL NO MATTER HOW ERRONEOUS, BAR ANY RETRIAL
12 AND THUS THAT, UNDER THE PROVISION IN 18 USC 3731 (1976 ed) APPEALS BY THE US WILL NOT LIE
13 WHEN REVERSAL WOULD REQUIRE RETRIAL." UNITED STATES V. SCOTT (1978) 437 U.S. 82

14 "THIS COURT HAS EXPLAINED IN SCOTT THAT THE DOUBLE JEOPARDY CONSEQUENCES
15 DIFFER "THE LAW ATTACHES PARTICULAR SIGNIFICANCE TO AN ACQUITTAL," SO A MERITS
16 RELATED RULING CONCLUDED PROCEEDINGS ABSOLUTELY. Id., at 91, 98 S.Ct. 2187 571 ed 2d
17 65 THIS IS BECAUSE "TO PERMIT A SECOND TRIAL AFTER AN ACQUITTAL, HOWEVER MISTAKEN
18 THE ACQUITTAL MAY HAVE BEEN, WOULD PRESENT AN UNACCEPTABLY HIGH RISK THAT THE
19 GOVERNMENT WITH ITS VASTLY SUPERIOR RESOURCES, MIGHT WEAR DOWN THE DEFENDANT
20 SO THAT "EVEN THOUGH INNOCENT HE MAY BE FOUND GUILTY" "IBID (QUOTING GREEN V.
21 UNITED STATES (1957) AND RETRIAL FOLLOWING ACQUITTAL WOULD UPSET A DEFENDANT'S
22 EXPECTATION OF REPOSE, FOR IT WOULD SUBJECT HIM TO ADDITIONAL EMBARRASSMENT,
23 EXPENSE AND ORdeal" WHILE "COMPELLING HIM TO LIVE IN A CONTINUING STATE
24 OF ANXIETY AND INSECURITY" id. EVANS V. MICHIGAN

25 "THE DISTRICT COURT IN [MARTIN LINEN] HAD EVALUATED THE GOVERNMENT'S EVIDENCE
26 AND DETERMINED THAT IT WAS LEGALLY INSUFFICIENT TO SUSTAIN A CONVICTION 430 U.S.
27 AT 572 97 S.Ct. 1349, THAT DETERMINATION OF NON-CULPABILITY WAS ENOUGH TO MAKE
28 THE ACQUITTAL AKIN TO A JURY VERDICT; OUR HOLDING DID NOT DEPEND UPON

1 DEFINING THE "ELEMENTS" OF THE OFFENSE. AS WE HAVE EXPLAINED SCOTT CONFIRMS THAT
2 THE RELEVANT DISTINCTION IS BETWEEN JUDICIAL DETERMINATIONS THAT GO TO THE
3 CRIMINAL DEFENDANTS LACK OF CRIMINAL CULPABILITY, AND THOSE THAT HOLD THAT
4 A DEFENDANT ALTHOUGH CRIMINALLY CULPABLE MAY NOT BE PUNISHED BECAUSE OF
5 A PROCEDURAL ERROR. CULPABILITY (I.E. THE ULTIMATE QUESTION OF GUILT OR INNOCENCE)
6 IS THE TOUCHSTONE, NOT WHETHER ANY PARTICULAR ELEMENTS WERE RESOLVED OR
7 WHETHER THE DETERMINATION OF NON-CULPABILITY WAS LEGALLY CORRECT. "EVANS
8 J. MICHIGAN (2013) 568 U.S. 313

9 "THE WRIT OF HABEAS CORPUS IS THE FUNDAMENTAL INSTRUMENT FOR SAFEGUARDING
10 INDIVIDUAL FREEDOM AGAINST ARBITRARY AND LAWLESS STATE ACTION. ITS PRE-EMINENT
11 ROLE IS RECOGNIZED BY THE ADMONITION IN THE CONSTITUTION THAT: "THE PRIVILEGE
12 OF THE WRIT OF HABEAS SHALL NOT BE SUSPENDED." THE SCOPE AND FLEXIBILITY
13 OF THE WRIT -- ITS CAPACITY TO REACH ALL MANNER OF ILLEGAL DETENTION -- ITS
14 ABILITY TO CUT THROUGH BARRIERS OF FORM AND PROCEDURAL MAZES -- HAVE
15 ALWAYS BEEN EMPHASIZED AND JEALOUSLY GUARDED BY COURTS AND LAWMAKERS.
16 THE VERY NATURE OF THE WRIT DEMANDS THAT IT BE ADMINISTERED WITH THE
17 INITIATIVE AND FLEXIBILITY ESSENTIAL TO ENSURE THAT MISCARRIAGES OF
18 JUSTICE WITHIN ITS REACH ARE SURFACED AND CORRECTED." HARRIS V. NELSON
19 (1969) 394 U.S. 286, 290-291

20 "CONSTITUTIONAL ERROR IN THE TRIAL PROCESS THAT RESULTS IN "THE
21 CONVICTION OF AN INNOCENT PERSON MAY BE THE ARCHETYPAL CASE OF
22 A MANIFEST MISCARriage OF JUSTICE" SAWYER V. WHITLEY (1992) 505 U.S.
23 333, 361

24 "WHERE THE FACTS ARE NOT IN DISPUTE, AND SO BUT A QUESTION OF LAW,
25 THE WRIT ISSUED IN THE BEGINNING. THERE IS NO NECESSITY TO WAIT TO SEE WHAT
26 THE TRIBUNAL WILL DO. THE ONE IN CUSTODY IS ENTITLED TO LIBERTY." EX PARTE
27 BECK (1917), DC MONT) 245 F. 967 CITING GONZALES V. WILLIAMS, 192 U.S. 1,
28 24 SUP. CT. 171. 48 L.ED 317; UNITED STATES V. SING TUCK, 194 U.S. 161, 24

1 SUP. CT. 621, 48 L. Ed. 917.

2 STATUTES AND REGULATIONS RELEVANT TO FACTUAL
3 DETERMINATIONS MADE BY THIS COURT

4 28 USC § 2254 (e) (1) READS, "IN A PROCEEDING INSTITUTED BY AN
5 APPLICATION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN CUSTODY PURSUANT TO THE
6 JUDGMENT OF A STATE COURT, A DETERMINATION OF A FACTUAL ISSUE MADE BY A STATE
7 COURT SHALL BE PRESUMED TO BE CORRECT, THE APPLICANT SHALL HAVE THE BURDEN OF
8 REBUTTING THE PRESUMPTION OF CORRECTNESS BY CLEAR AND CONVINCING EVIDENCE."

9 28 USC § 2254 (G) "A COPY OF THE OFFICIAL RECORDS OF THE STATE COURT,
10 ONLY CERTIFIED BY THE CLERK OF SUCH COURT TO BE TRUE A TRUE AND CORRECT
11 COPY OF A FINDING, JUDICIAL OPINION, OR OTHER RELIABLE WRITTEN INDICIA
12 SHOWING SUCH A FACTUAL DETERMINATION BY THE STATE COURT SHALL BE
13 ADMISSIBLE IN THE FEDERAL COURT PROCEEDING."

14 FEDERAL RULES OF EVIDENCE 201 (b) ALLOWS THIS COURT TO "JUDICIALLY NOTICE
15 A FACT THAT IS NOT SUBJECT TO REASONABLE DOUBT BECAUSE IT: (1) IS REASONABLY KNOWN
16 WITHIN THE TRIAL COURT'S TERRITORIAL JURISDICTION OR (2) CAN BE ACCURATELY AND
17 READILY DETERMINED FROM SOURCES WHOS ACCURACY CAN NOT REASONABLY BE
18 QUESTIONED" APPLICATION CONTAINS NO FACTUAL DISPUTE (SEE EXA B, P5-9)

19 STATEMENT OF THE CASE
20 FACTS MATERIAL TO THE QUESTIONS

21 THE PETITIONER FIRST RAISED THIS IMPORTANT FEDERAL QUESTION IN THE
22 CALIFORNIA SUPERIOR COURT WHEN HE FILED HIS PRO-SE PETITION FOR WRIT
23 OF HABEAS CORPUS ON AUGUST 26, 2014.

24 SPECIFICALLY HAMPTON CLAIMED HE WAS DENIED A FAIR TRIAL IN VIOLATION
25 OF HIS RIGHTS TO COUNSEL AND TO DUE PROCESS OF LAW ARISING FROM
26 THE ABSENCE OF AN INSTRUCTION ALONG THE LINES OF CAL CRIM 570 THAT
27 WOULD HAVE ADVISED THE JURY THAT MALICE IS NEGATED IF THE DEFENDANT
28 WERE PROVOKED, AND EMPOWERED THEM WITH THE ABILITY TO DELIBERATE

1 OVER HIS DEFENSE AND A MORE FAVORABLE OUTCOME AT TRIAL MAY HAVE BEEN
2 RENDERED.

3 ADDRESSING DELAY IN NOT EARLIER RAISING HIS CLAIMS CONCERNING THE
4 TRIAL COURT'S FAILURE TO INSTRUCT ON PROVOCATION, EITHER ON APPEAL OR IN THE
5 FIRST PETITION HE FILED SEEKING RELIEF FOR INSUFFICIENCY OF EVIDENCE, PETITIONER
6 EXPLAINED THAT "ADEQUATE COUNSEL FAILED TO RAISE AND PETITIONER DOES NOT HAVE
7 ADEQUATE SKILL AND RESOURCES TO PURSUE AN EFFECTIVE REPRESENTATION ON HIS OWN,
8 BUT PETITIONER RECENTLY FOUND A CASE (PEOPLE V. THOMAS (2013) 218 CAL. APP. 4TH
9 630), " A COPY OF WHICH HE ATTACHED TO HIS PETITION. HAMPTON INVOKED
10 THE RECENT DEVELOPMENTS IN THE LAW REFLECTED IN THOMAS AND
11 PEOPLE V. MILLBROOK (2014) 222 CAL. 4TH 1122 IDENTIFIES THE INSTRUCTIONAL
12 ERRORS FEDERAL CONSTITUTIONAL DIMENSION OF A TRIAL COURT'S FAILURE TO
13 SUA SPONTE INSTRUCT ON PROVOCATION AS PART OF HIS JUSTIFICATION
14 FOR FILING HIS SUCCESSIVE PETITION. HE CLAIMED ACTUAL INNOCENCE OF
15 MURDER (CT 15) "PETITIONER CONTENTS HE DID NOT ACT WITH MALICE"
16 (CT 23)

17 THE DISTRICT ATTORNEY APPEARED AS COUNSEL FOR RESPONDENT WARDEN
18 ON BEHALF OF THE PEOPLE ("THE STATE") AND FILED A RETURN TO THE ORDER
19 TO SHOW CAUSE AFTER OBTAINING TWO EXTENSIONS OF TIME "TO CONDUCT A
20 THOROUGH INVESTIGATION." (CT 71) THE RETURN OFFERED NO PROCEDURAL DEFENSES
21 AND DEFENDED SOLELY ON THE GROUND THAT HAMPTON'S CLAIMS ALL FAILED BECAUSE
22 NO SUBSTANTIAL EVIDENCE SUPPORTED AN INSTRUCTION ON PROVOCATION. (CT 84-106)

23 HAMPTON AGAIN PRESERVED THE ASSERTION THAT FEDERAL CONSTITUTIONAL
24 LAW REQUIRES ADEQUATE INSTRUCTION ON THE ELEMENT OF THE OFFENSE (HERE,
25 MALICE.) (CT 114-116)

26 THE HABEAS COURT ORDERED THE PARTIES TO ADDRESS IN SUPPLEMENTAL
27 PLEADINGS TWO ISSUES, ONLY ONE OF WHICH IS RELEVANT HERE: WHETHER THE
28 STANDARD FOR PREJUDICE FOR ANY ERROR IN THE COURT'S FAILURE TO GIVE

1 CALCRIM 570 WAS THE STRICT FEDERAL ONE OF CHAPMAN V. CALIFORNIA (1967) 386 U.S.
2 18 THAT REQUIRES THE PROSECUTION TO PROVE THERE WAS NO REASONABLE POSSIBILITY OF A
3 MORE FAVORABLE OUTCOME ABSENT THE ERROR, OR THE MORE RELAXED STATE STANDARD OF
4 PEOPLE V. WATSON (1956) 46 CAL. 2D 818 THAT REQUIRES A SHOWING OF A REASONABLE
5 PROBABILITY OF A MORE FAVORABLE OUTCOME. (CT 158)

6 THE STATE CLAIMED THE STATE STANDARD OF PREJUDICE APPLIED, CITING PEOPLE V.
7 BREVERMAN (1998) 19 CAL. 4TH 142, 154-155, WHERE THE MAJORITY HAD HELD THAT A
8 FAILURE TO INSTRUCT SUA SPONTE ON A LESSER OFFENSE (THERE, AS HERE, MANSLAUGHTER
9 BASED ON A PROVOCATION THEORY) IS A STATE LAW ERROR THAT IMPLICATES THE STATE
10 LAW MEASURE OF PREJUDICE. (CT 169) HAMPTON ARGUED THAT THE FEDERAL STANDARD
11 APPLIED, PLACING PARTICULAR RELIANCE ON THOMAS. (CT 176.) IN THAT CASE, THE
12 CALIFORNIA SUPREME COURT GRANTED THE DEFENDANT'S PETITION FOR REVIEW AND REMANDED
13 TO THE COURT OF APPEAL WITH DIRECTIONS TO CONSIDER HIS CONTENTION THAT THE
14 REFUSAL TO INSTRUCT ON PROVOCATION WAS FEDERAL CONSTITUTIONAL ERROR. (PEOPLE
15 V. THOMAS, SUPRA, 218 CAL. APP. 4TH AT P. 633) ON REMAND, THE COURT OF APPEAL
16 IN THOMAS NOTED THE "IMPORTANT CAVEAT" THAT IN BOTH BREVERMAN AND PEOPLE
17 V. MOYE (2009) 47 CAL. 4TH 537 - THE CASES THAT IT HAD RELIED UPON TO INITIALLY
18 APPLY THE STATE STANDARD, WITH MOYES ALSO CONCERNING A REFUSAL TO INSTRUCT
19 ON PROVOCATION - "THE DEFENDANTS IN THOSE CASES NEVER ARGUED THE INSTRUCTIONS
20 WERE DEFICIENT UNDER FEDERAL LAW." (PEOPLE V. THOMAS, SUPRA, AT P. 633)

21 THOMAS FOUND THE FEDERAL STANDARD APPLIED, REASONING THUSLY:
22 A "A MISTAKEN INSTRUCTION ON MALICE AS AN ELEMENT OF MURDER
23 IS CONSTITUTIONAL ERROR THAT IS REVIEWED FOR ITS PREJUDICIAL
24 EFFECT UNDER THE RULE ESTABLISHED IN CHAPMAN V. CALIFORNIA, SUPRA,
25 386 U.S. 18. (PEOPLE V. SWAIN (1996) 12 CAL. 593, 607; ACCORD, PEOPLE V. FLOOD
26 (1998) 18 CAL. 4TH 470, 502-503.) THAT IS, IN SUCH CASES WE CONSIDER
27 WHETHER IT APPEARS BEYOND A REASONABLE DOUBT THAT THE ASSERTED
28 ERROR DID NOT CONTRIBUTE TO THE VERDICT. (PEOPLE V. SWAIN, SUPRA, 12 CAL. 4TH

1 AT P. 667.) THE PRINCIPAL QUESTION WE WILL ADDRESS IN THIS OPINION
2 IS WHETHER THE FAILURE TO INSTRUCT ON PROVOCATION OR HEAT OF PASSION
3 AS IT BEARS ON THE CULPABILITY FOR HOMICIDE, WHERE WARRANTED
4 BY THE EVIDENCE, RESULTS IN AN ERRONEOUS JURY CHARGE ON AN
5 ELEMENT OF MURDER, OR SOME LESSER ERROR. FOR THE REASONS
6 THAT FOLLOW, WE CONCLUDE THE FAILURE TO INSTRUCT ON PROVOCATION
7 WHERE WARRANTED IS AN ERROR OF FEDERAL CONSTITUTIONAL
8 DIMENSION THAT DENIES THE DEFENDANT DUE PROCESS BECAUSE IT
9 RELIEVES THE PROSECUTION OF THE BURDEN TO PROVE MALICE
10 BEYOND A REASONABLE DOUBT."

11 (PEOPLE V. THOMAS, SUPRA, 218 CAL. APP. 4TH AT P. 629 ALSO P. 654)

12 THE HABEAS COURT ISSUED ITS ORDER GRANTING RELIEF" AFTER CONSIDERING
13 THE WRITTEN MATERIALS INCLUDING THE RETURN AND TRAVERSE, AND AFTER
14 "HAVING EVALUATED THE PETITION, RETURN, TRAVERSE, SUPPLEMENTAL RETURN, AND
15 SUPPLEMENTAL TRAVERSE." (CT 196) AFTER NOTING THAT THE RETURN RESTED
16 ON THE ARGUMENT THAT "THE FACTS DID NOT SUPPORT GIVING THE INSTRUCTION,
17 EITHER UPON REQUEST OR SUA SPONTE," THE COURT DETERMINED "THAT AN
18 EVIDENTIARY HEARING IS NOT NECESSARY BECAUSE THERE ARE NO DISPUTED
19 ISSUES OF MATERIAL FACTS AS TO THE ISSUES IDENTIFIED IN THE ORDER TO
20 SHOW CASE OR REQUEST FOR SUPPLEMENTAL BRIEFING." (CT 196.)

21 IT FURTHER NOTED THAT CLAIMS THAT COULD HAVE BEEN RAISED ON APPEAL
22 ARE NOT COGNIZABLE ON HABEAS CORPUS UNLESS THE PETITIONER CAN SHOW,
23 AMONG OTHER THINGS " 1) CLEAR AND FUNDAMENTAL CONSTITUTIONAL ~~ERROR~~ STRIKES
24 AT THE HEART OF THE TRIAL PROCESS ... OR [2] A CHANGE IN LAW AFTER
25 THE [DIRECT] APPEAL AFFECTED THE PETITIONER." (CT 197, CITING IN RE HARRIS
26 (1993) 5 CAL 4TH 813, 828.)

27 ON THE MERITS OF HAMPTON'S CLAIMS THAT " THAT TRIAL COUNSEL SHOULD HAVE
28 REQUESTED THE JURY BE INSTRUCTED ON HEAT OF PASSION WITH CALCRIM 570 OR

1 THE TRIAL COURT SHOULD HAVE GIVEN THE INSTRUCTION SUA SPONTE BECAUSE THERE
2 WAS EVIDENCE TO SUPPORT THE LESSER INCLUDED OFFENSE OF MANSLAUGHTER UNDER
3 A THEORY OF HEAT OF PASSION" (CT. 188), THE HABEAS COURT CONCLUDED THAT THE
4 TRIAL COURT'S "FAILURE TO GIVE THE INSTRUCTION WAS ERRONEOUS." (CT 190.) IT
5 FURTHER FOUND THAT THE ERROR WAS PREJUDICIAL, WARRANTING HABEAS RELIEF,
6 AND THUS FOUND NO NEED TO ADDRESS ANY CLAIM OF I.A.C. (CT 189)

7 IN THIS REGARD, THE HABEAS COURT FOUND THAT "UNTIL 2013,
8 THE STANDARD OF REVERSAL FOR ERROR" IN FAILING TO GIVE AN INSTRUCTION
9 ON PROVOCATION WAS WATSON, BASED UPON THE CALIFORNIA SUPREME COURT'S
10 MAJORITY DECISION IN BREVERMAN THAT SUCH FAILURE VIOLATED A DEFENDANT'S
11 STATE RIGHT TO INSTRUCTIONS ON LESSER INCLUDED DEFENSES RAISED BY THE
12 EVIDENCE. (CT. 13.) BUT IT FOUND THAT AFTER THOMAS SUCH ERROR MUST
13 ALSO BE DEEMED FEDERAL CONSTITUTIONAL ERROR, FOR THOMAS HELD THAT
14 ABSENCE OF A PROVOCATION INSTRUCTION CONSTITUTES MIS-INSTRUCTION ON
15 "THE ELEMENT OF MALICE," A VIOLATION OF DUE PROCESS. (CT 191.) AS THE
16 HABEAS COURT REASONED: (EXA)

17 "ALTHOUGH THE SUPREME COURT HAS NOT ADDRESSED THIS
18 PARTICULAR ISSUE, THE PROCEDURAL HISTORY OF THOMAS INDICATES THAT
19 BREVERMAN DOES NOT COVER THE PRECISE ISSUE RAISED IN THIS CASE.
20 THE COURT OF APPEAL IN THOMAS ORIGINALLY EVALUATED THE ERROR
21 UNDER THE WATSON STANDARD. THE SUPREME COURT GRANTED
22 THOMAS'S PETITION FOR REVIEW AND DIRECTED THE COURT OF APPEAL
23 TO ADDRESS HIS CLAIM THAT THE INSTRUCTIONAL ERROR CONSTITUTED
24 FEDERAL CONSTITUTIONAL ERROR. THEREAFTER, THE COURT OF APPEAL,
25 FINDING THAT ERROR INVOLVING THE HEAT OF PASSION INSTRUCTION
26 RELATED TO THE ELEMENT OF MALICE THAT MUST BE PROVEN
27 BEYOND A REASONABLE DOUBT, CONCLUDED THAT SUCH ERROR
28 MUST BE ANALYZED FOR PREJUDICE UNDER CHAPMAN. AS

1 THE PEOPLE'S PETITION FOR REVIEW WAS SUBSEQUENTLY DENIED
2 THE SUPREME COURT SILENTLY APPROVED OF THOMAS. [citation]
3 THEREFORE, ERROR IN THIS CASE MUST BE REVIEWED UNDER
4 CHAPMAN. " (CT 191.)

5 ALTHOUGH THE HABEAS COURT DID NOT EXPLICITLY MAKE A FINDING OF
6 PREJUDICE UNDER THE STATE STANDARDS WATSON, IT SUGGESTED THAT THE
7 ERROR MET THAT STANDARD AS WELL WHEN IT CITED PEOPLE V. MILLBROOK
8 (2014) 22 CAL. APP. 4TH 1172 AND QUOTED ITS HOLDING THAT SIMILAR "ERROR
9 WAS PREJUDICIAL EVEN UNDER THE WATSON STANDARD WHERE [THE] VICTIM
10 WAS BELLIGERENT AND THREATENING AND THE DEFENDANT SHOT IN THE MIDDLE OF
11 THEIR ARGUMENT." (CT 192)

12 STATES APPEAL

13 THE STATE APPEALED (CT. 195), AND FILED AN OPENING BRIEF (AOB) IN
14 WHICH IT "ARGUED - FOR THE FIRST TIME ON APPEAL - THAT DEFENDANTS' CURRENT
15 HABEAS PETITION IS PROCEDURALLY BARRED AS A SUCCESSIVE PETITION. AND THE PEOPLE
16 CONTEND THAT, EVEN IF DEFENDANTS' HABEAS PETITION WERE NOT PROCEDURALLY BARRED
17 THE TRIAL COURT NONETHELESS ERRED IN GRANTING RELIEF BECAUSE THERE WAS NO
18 SUBSTANTIAL EVIDENCE AT TRIAL TO SUPPORT A CALCRIM NO. 570 INSTRUCTION ON
19 HEAT OF PASSION FOR VOLUNTARY MANSLAUGHTER." (TYP. OPN. 2; SEE ALSO TYP. OPN. 10
20 [THE PEOPLE CONTEND THE TRIAL COURT SHOULD HAVE FOUND DEFENDANTS' HABEAS CORPUS
21 PETITION TO BE PROCEDURALLY BARRED AS AN "UNTIMELY AND SUCCESSIVE PETITION".])

22 IN HIS RESPONDENT'S BRIEF (RB), HAMPTON "COUNTERED THE PEOPLE FORFEITED
23 THEIR SUCCESSIVE PETITION ARGUMENT BY FAILING TO RAISE IT IN THE TRIAL COURT.
24 THE RECORD CONFIRMS THE PEOPLE DID NOT RAISE THIS ARGUMENT BELOW." (TYP. OPN. 13)
25 HAMPTON FURTHER ARGUED IN THIS REGARD:

26 "THE STATE HAS OFFERED NEITHER EXCUSE NOR CAUSE FOR ITS FAILURE
27 TO RAISE ITS PROCEDURAL DEFENSES IN THE HABEAS COURT, DESPITE ITS
28 MULTIPLE OPPORTUNITIES TO DO SO. NOR HAS IT OFFERED ANY BASIS FOR THIS

1 COURT TO OVERLOOK THAT FAILURE AND TAKE THE EXTRA-ORDINARY STEP
2 REQUESTED OF CONSIDERING THOSE DEFENSES FOR THE FIRST TIME ON APPEAL.
3 BESIDES THE LACK OF ANY REASON THAT SUPPORTS SUCH EXTRA-ORDINARY
4 ACTION BY THIS COURT, THERE ARE MANY REASONS WHY THIS COURT SHOULD
5 NOT TAKE SUCH ACTION. " (RB 15-16)

6 THIS BELATED ARGUMENT VIVIDLY ILLUSTRATES THE UNFAIRNESS TO THE
7 PARTIES, THE SNOBBAGING OF THE SUPERIOR COURT AND THE DELAY IN
8 TIMELY RESOLUTION OF LITIGATION THAT THE RULE OF FORFEITURE IS
9 DESIGNED TO PROTECT AGAINST. FOR EXAMPLE, THE STATE'S ARGUMENT
10 [OF NO NEW LAW] EFFECTIVELY MAKES HAMPTON'S CLAIMS OF TRIAL
11 AND APPELLATE ~~I.A.C~~ FOR HIM, FOR IN THAT CASE THEIR DEFICIENT
12 PERFORMANCE IS INDISPUTABLE. THE SUPERIOR COURT, HOWEVER DID NOT
13 NEED TO ADDRESS THOSE CLAIMS IN LIGHT OF ITS FINDING OF
14 TRIAL COURT'S ERROR THAT FUNDAMENTALLY FLAWED THE CONVICTION
15 AND ENTITLED HAMPTON TO RELIEF. (CT 177) HAD THE STATE MADE
16 AND THE SUPERIOR COURT SUSTAINED THE STATE'S CLAIMS OF PROCEDURAL
17 DEFAULT THAT IT HAD PRESENTED TO THIS COURT, HOWEVER, HIS CLAIMS
18 OF I.A.C. WOULD HAVE PERMITTED HIM TO OVERCOME THAT DEFAULT AND THE
19 SUPERIOR COURT TO ADDRESS HIS CLAIM THAT LACK OF INSTRUCTION THAT
20 PROVOCATION / HEAT OF PASSION NEGATES MALICE DEPRIVED HIM OF
21 A FUNDAMENTALLY FAIR TRIAL. (RB 18)

22 AS TO THE MERITS, HAMPTON NOTED:

23 "THE STATE'S CLAIM FOR REVERSIBLE ERROR ON THE MERITS RESTS ON A
24 NARROW ARGUMENT: THAT THERE IS NO SUBSTANTIAL EVIDENCE SUPPORTING
25 INSTRUCTION ON PROVOCATION / HEAT OF PASSION, SO THERE WAS NO ERROR
26 (EITHER COURT OR ATTORNEY) IN THE LACK OF INSTRUCTION THAT
27 PROVOCATION / HEAT OF PASSION NEGATES MALICE. (RB 23) THUS, THE
28 STATE HAS FORFEITED THIS COURT'S CONSIDERATION OF ANY ISSUES

1 CONCERNING PREJUDICE FROM THE ERROR. (RB 22)

2 HAMPTON, ACCORDINGLY FOCUSED ON THE STATE'S SINGLE ASSIGNMENT OF ERROR ON THE
3 MERITS: THE QUESTION WHETHER SUBSTANTIAL EVIDENCE SUPPORTED AN INSTRUCTION TO THE
4 JURY THAT PROVOCATION NEGATES MALICE (AN ISSUE RES JUDICATA) SO THAT THE
5 TRIAL COURT'S FAILURE TO SO INSTRUCT WAS ERROR. THE STATE FILED NO REPLY
6 BRIEF.

7 THE COURT OF APPEAL INITIALLY ISSUED AN OPINION IN WHICH IT INADVERTENTLY
8 HAD FAILED TO OFFER THE PARTIES AN OPPORTUNITY FOR ORAL ARGUMENT. 6/09/17
9 (IN RE HAMPTON 6/9/17, COB1634 2017 CAL. APP. LEIS 3984) IN THAT OPINION,
10 IT REVERSED DEFENDANT'S GRANTED WRIT OF HABEAS CORPUS ON THE SAME PURPORTED
11 GROUND OF PROCEDURAL ERROR FOR WHICH IT ULTIMATELY REVERSED (IN ITS
12 SECOND OPINION FILED ON 9/13/17) ADDRESSING THE STATE'S FORFEITURE OF
13 THE ISSUE IN A SINGLE SENTENCE SUPPORTED BY A SINGLE AUTHORITY, TO WIT:
14 "BECAUSE THE ISSUE RAISED BY THE PEOPLE INVOLVES A PURE QUESTION OF LAW
15 APPLIED TO UNDISPUTED FACTS, WE EXERCISE OUR DISCRETION TO CONSIDER IT."
16 SAN MATEO UNION HIGH SCHOOL DIST. V. COUNTY OF SAN MATEO (2013) 213 CAL APP 4TH 418
17 IN RE HAMPTON, SUPRA AT 12 FN.2.]

18 THE CALIFORNIA COURT OF APPEAL VACATED ITS OPINION ON ITS OWN
19 MOTION AFTER DISCOVERING ITS INADVERTENT FAILURE TO AFFORD THE PARTIES
20 AN OPPORTUNITY FOR ORAL ARGUMENT. HAMPTON REQUESTED ORAL ARGUMENT, WHICH
21 WAS QUILY HELD, IN WHICH HAMPTON MADE MANY OF THE ARGUMENTS CITED ABOVE.

22 FOLLOWING ORAL ARGUMENT THE CALIFORNIA COURT OF APPEAL ISSUED ITS
23 SECOND OPINION 9/13/17 IN WHICH IT ENTIRELY OMITTED ITS FOOTNOTE FOR
24 JUSTIFICATION OF EXERCISING ITS DISCRETION TO OVERLOOK THE STATE'S
25 FORFEITURE OF A PROCEDURAL DEFENSE. AND INSTEAD OF JUSTIFYING ITS
26 -ABUSE OF DISCRETION- AND ITS EXCEPTIONAL ACTION ON THE GROUND
27 THAT IT HAS DISCRETION TO OVERLOOK FORFEITURE BECAUSE THE
28 CLAIM INVOLVED A PURE QUESTION OF LAW, IT OVERLOOKED THE FORFEITURE

1 ON THE GROUND THAT THE STATES FULFILLED DUTY REMAINED TO THE
2 TRIAL COURT FOR FACTUAL DEVELOPMENT - CITING ABSOLUTELY NO LAW TO
3 SUPPORT ITS ACTION. (TYP. CAP. 13) FOR NONE EXISTS.

4 IN THE CALIFORNIA COURT OF APPEALS OPINION (EXD P. 11) IT DETERMINED
5 "B. THE TRIAL COURT ERRED IN FINDING A CHANGE IN LAW RELATING TO
6 DEFENDANT'S CASE" BY NOTING THAT THOMAS'S CONCLUSION THAT THE
7 CHAPMAN STANDARD APPLIED THE THOMAS COURT EXPLICITLY EXPLAINED THAT
8 "THIS CASE CONCERNS THE COURT'S DUTY TO GIVE A REQUESTED INSTRUCTION,
9 NOT THE SUA SPONTE DUTY TO INSTRUCT [ON A LESSER INCLUDED OFFENSE] AT
10 ISSUE IN [PEOPLE V. BARNERMAN [(1998) 19 CAL. 4TH 142]]." THOMAS AT P. 644

11 ALTHOUGH MILLBROOK, SUPRA, 222 CAL. APP. 4TH 1146 ANOTHER CASE THE OPINION
12 UTILIZED SPECIFICALLY ADDRESSED IN A FOOTNOTE. 12 "WE CAN NOT PERCEIVE HOW
13 THE RESOLUTION OF WHETHER THE FEDERAL CONSTITUTION IS IMPLICATED BECAUSE OF
14 THE JURY'S INABILITY TO DETERMINE EACH ELEMENT OF THE OFFENSE WOULD
15 DEPEND ON WHETHER A HEAT OF PASSION INSTRUCTION WAS REJECTED AFTER
16 A REQUEST OR NOT GIVEN SUA SPONTE." MILLBROOK ALSO PRESENTS "WHETHER
17 TRIAL COURTS EVER HAVE A DUTY UNDER THE FEDERAL CONSTITUTION TO GIVE
18 SUA SPONTE A HEAT OF PASSION INSTRUCTION IN A NONE-CAPITAL CASE IS
19 UNRESOLVED."... AND "WE TAKE A MOMENT TO CONSIDER THE FEDERAL
20 CONSTITUTIONAL ISSUES BECAUSE THE CASE AUTHORITY ON THIS IMPORTANT
21 QUESTION IS INCONCLUSIVE AND BECAUSE, AS WE HAVE DISCUSSED BELOW
22 OUR [CA.] SUPREME COURT IN THOMAS EXPLICITLY DIRECTED THE COURT OF APPEAL
23 TO CONSIDER THE FEDERAL CONSTITUTIONAL ISSUES." MILLBROOK, 222 CAL. APP. 4TH 1222

24 THE HABERS COURT IN HAMPTON'S ONGOING PROCEEDINGS... ULTIMATELY
25 DENIED HIS PETITION THAT IT ORIGINALLY GRANTED. CITING THE PETITION
26 IS PROCEUDORALLY BARRED AT WHOLE 3/10/18. IT ALSO DENIED HIS MOTION
27 FOR RECONSIDERATION 7/25/18. PETITIONER RAISED THE SAME ISSUE
28 OF A TRIAL COURTS FAILURE TO SUA SPONTE INSTRUCT ON PROVOCATION

1 PASSION WHERE WARRANTED IN A NON-CAPITAL CASE, AS IT RELATES TO THE
2 ELEMENT OF THE OFFENSE, THUS PRESERVING THE CLAIM OF FEDERAL ERROR,
3 AGAIN IN THE CALIFORNIA COURT OF APPEAL. AND IN THE CALIFORNIA SUPREME
4 COURT. ALL OF WHICH THESE COURTS INSIST UPON NOT ASSIGNING THE ERROR
5 TO THE TRIAL COURTS ACCOUNTABILITY, NOR ASSUMING JURISDICTION TO
6 ADDRESS THE RIPPENED QUESTION BEFORE THEM IN HAMPTON.

7 ARGUMENT

8 28 USC §1257 STATE LAWS IS REPUGNANT TO FEDERAL LAWS

9 THERE EXISTS A PLETHORA OF FEDERAL CASE LAWS FROM THE NINTH CIRCUIT COURT
10 OF APPEALS THAT VENERATE THIS COURTS HOLDING OF MULLANEY AND GAUDIN. AS PASSION
11 PROVOCATION INSTRUCTIONS RELATES TO THE PROSECUTIONS REASONABLE DOUBT STANDARD TO CONVICT
12 ON AN ELEMENT OF THE OFFENSE CHARGED.

13 THE CALIFORNIA SUPREME COURTS HOLDING THAT "THE FAILURE TO INSTRUCT SUA SPONTE
14 ON A LESSER INCLUDED OFFENSE IN A NON CAPITAL CASE IS, AT MOST, AN ERROR OF
15 CALIFORNIA LAW ALONE, AND IS THUS SUBJECT ONLY TO STATE STANDARDS OF REVERSIBILITY
16 ...SUCH MISDIRECTION OF THE JURY IS NOT SUBJECT TO REVERSAL UNLESS AN EXAMINATION
17 OF THE ENTIRE RECORD ESTABLISH A REASONABLE PROBABILITY THAT THE ERROR
18 AFFECTED THE OUTCOME. [citations] PEOPLE V. BREVERMAN (1998) 19 CAL. 4TH 142, 143 [APPLYING
19 WATSON STANDARD TO A FAILURE TO INSTRUCT ON HEAT OF PASSION VOLUNTARY MANSLAUGHTER.]

20 CALIFORNIA'S APPLICATION OF WATSON'S HARMLESS ERROR STANDARD TO A FAILURE
21 TO INSTRUCT ON PASSION WHEN IT RELATES TO AN ELEMENT OF THE OFFENSE THAT THE
22 STATE MUST PROVE RESONATES IN REPUGNANCE AS AN AMBIGUOUS CREATURE
23 TO THIS COURTS REVERED HOLDINGS IN GAUDIN AND MULLANEY.

24 THE CALIFORNIA COURT OF APPEAL REFERRED TO BREVERMAN WHILE UNPRECEDENTLY
25 REVERSING PETITIONER'S GRANTED WRIT OF HABEAS CORPUS. (P. 12. EX. 1) WHILE STATING
26 "WE CONCLUDE THOMAS, SUPRA, 218 CAL. APP. 4TH 630 DID NOT CREATE A NEW RULE
27 OF LAW REGARDING THE STANDARD FOR ASSESSING PREJUDICE WHEN, AS HERE, THE
28 TRIAL COURT FAILS TO INSTRUCT SUA SPONTE ON A LESSER INCLUDED OFFENSE

1 IN A NON-CAPITAL CASE." (pg 12 ex b)

2 WHEN IT UNAMBIGUOUSLY DID DEFINE, FOR THE FIRST TIME IN PUBLISHED
3 CALIFORNIA JURISPRUDENCE A MAJORITY HOLDING THAT CO-RELATES A HEAT OF PASSION
4 INSTRUCTION IN ITS TRUE IDENTITY, AS RELATING TO THE PROSECUTION'S BURDEN
5 OF PROOF UPON AN ELEMENT OF THE OFFENSE CHARGED, THAT IMPLICATES THE
6 FEDERAL CONSTITUTION AND IS REVERSIBLE UNDER CHAPMAN V. CALIFORNIA (1967)
7 386 U.S. 18 - ALTHOUGH THOMAS REFERS TO A REFUSAL TO INSTRUCT AND NOT A SUA SPONTE
8 DUTY TO PROVIDE AN INSTRUCTION RELEVANT TO AN ELEMENT OF THE CRIME CHARGED.

9 FOR THE FIRST TIME TWO CALIFORNIA COURTS OF APPEALS (THOMAS (2013) AND MILLBROOK (2014))
10 HAS HAD THE OPPORTUNITY TO APPRECIATE THE VALUE OF THIS COURT'S HOLDINGS, AND
11 WHEN THE CALIFORNIA SUPERIOR COURT GRANTED PETITIONERS' WRIT OF LIBERTY ON
12 THIS CLAIM OF A TRIAL COURT'S FAILURE TO SUA SPONTE INSTRUCT ON PASSION AS IT RELATES
13 TO AN ELEMENT OF THE OFFENSE CHARGED." ... IT ALSO IDENTIFIED THE STATE OF
14 CALIFORNIA'S LACK OF CORRECTIVE PROCESS BY NOTING THAT CIRCUMSTANCES EXIST
15 THAT REMEDS CALIFORNIA'S PROCESS INEFFECTIVE TO PROTECT MY FEDERAL RIGHTS,
16 BY FINDING..." ALTHOUGH THE [CALIFORNIA] SUPREME COURT HAS NOT ADDRESSED THIS
17 PARTICULAR ISSUE, THE PROCEDURAL HISTORY OF THOMAS INDICATES THAT BREVERMAN
18 DOES NOT COVER THE PRECISE ISSUES RAISED IN THIS CASE." (pg. 8 LINE 7 EX. A)

19 THE STATE OF CALIFORNIA HAS CONCLUSIVELY MERGED TOGETHER THIRCE. THE
20 PROSECUTION, ALL THREE COURTS OF JURISDICTION IN CALIFORNIA, AND THE CALIFORNIA
21 DEPARTMENT OF CORRECTIONS AND REHABILITATION IN THEIR ACCUMULATIVE APPROACH TO HAMPTON'S
22 CENTRAL SUBMISSION OF THE STATES FAILURE TO SUA SPONTE INSTRUCT UPON THE ELEMENT OF
23 THE OFFENSE. THE STATE SEEKS TO PERPETRATE THE OPENED QUESTION AND NO OTHER
24 RELIEF IS AVAILABLE IN ANY COURT AS TO THE CENTRAL SUBMISSION OF MY CLAIMS.

25 ARGUMENT

26 CALIFORNIA HAS A LACK OF CORRECTIVE PROCESS

27 THE ASSIGNMENT OF ERROR IN THE 2009 TRIAL COURT SHOULD REST UPON
28 THE "UNCONSTITUTIONAL WITHDRAWAL" OF THE INSTRUCTION QUESTION (ING) WHETHER THE

1 GOVERNMENT PROVED [A] CRITICAL ELEMENT OF THE OFFENSE [THAT] 'CAN NOT BE
2 [DEEMED] HARMLESS " UNITED STATES V. GAUDIN, SUPRA, 515 U.S. at 523, 526

3 THE STANDARD ~~FOR~~^{IS} ASSESSMENT FOR PREJUDICE WHEN CALIFORNIA COURTS
4 ARE FACED WITH SUCH AN INSTRUCTIONAL ERROR WHERE TRIAL COURTS HAVE FAILED
5 TO SUASPONTE INSTRUCT ON PASSION AS IT RELATES TO THE ELEMENT OF MALICE
6 SHOULD BE ADDRESSED AND FIXED TO BE DETERMINED BY THE CALIFORNIA
7 SUPREME COURT. AS THIS COURTS HOLDINGS IN MULLANEY V. WILBURY (1975) 421 U.S.
8 UNITED STATES V. GAUDIN (1995) 515 U.S. 506 AND CHAPMAN V. CALIFORNIA (1967) 386
9 U.S. 18, 24. HAVE BEARING OVER HAMPTON, BREVERMAN AND MOYE THAT CONFER
10 TO US RIGHTS, RIGHTS THAT CALIFORNIA FAILS TO PROTECT.

11 THE CIRCUMSTANCES THAT EXIST THAT RENDERS CALIFORNIA'S CORRECTIVE PROCESS
12 INSUFFICIENT TO PROTECT HAMPTON'S FEDERAL RIGHTS IS BECAUSE THE CALIFORNIA SUPREME
13 COURTS HISTORICAL RELUCTANCE TO ADDRESS SUCH AN IMPORTANT AND HIGHLY REGARDED
14 QUESTION THAT THE FEDERAL DUE PROCESS CLAUSE IS VENERABLE TO, WHILE ITS HOLDING
15 IN BREVERMAN (1998) FAILS SHORT OF "COVERING THE PRECISE ISSUES RAISED IN
16 THIS CASE." (198 UNET EX A)

17 THE CALIFORNIA SUPREME COURTS HOLDINGS IN BREVERMAN (1998), MOYE (2009)
18 RULING THAT THE FAILURE TO SUASPONTE INSTRUCT UPON PASSION AS IT RELATES TO
19 MALICE IS FOUND TO BE SUBJECT TO THE STATES STANDARD OF REVERSIBILITY UNDER
20 PEOPLE V. WATSON (1956) [46 CAL 2d 818, 836] HARMLESS ERROR ANALYSIS WHILE IGNORING
21 ITS OWN JUSTICE KENNARD'S STRONG DISSENTS. COUPLED WITH ITS DIRECTIVES IN THEIR
22 GRANTING REVIEW OF PEOPLE V. THOMAS, SUPRA, 214 CAL. APP. 4TH AT PG. 633 REMANDING
23 TO THE COURT OF APPEAL TO CONSIDER HIS CONTENTION THAT THE REFUSAL TO INSTRUCT
24 ON PROVOCATION WAS FEDERAL ERROR, THAT INITIATED THE GROUND BREAKING
25 DEVELOPMENTS OF CALIFORNIA JURISPRUDENCE AND ACTIVATED THE CONCLUSION OF
26 PEOPLE V. MILLBROOK (2014)'S DETERMINATION THAT SUCH AN ERROR IS SUBJECT
27 TO REVERSAL EVEN UNDER THE LESS STRINGENT WATSON STANDARD ITSELF,
28 CAN ONLY PORTRAY TO THIS COURT WITH CLARITY THAT CALIFORNIA HAS

1 RETAINED ITS POWER TO ABUSE ITS DISCRETION AND ARBITRARILY CONSTRAINE
2 THEIR OWN CAPRICIOUS INTERPRETATIONS OF GAUGING PREJUDICE ACCRVED TO
3 DEFENDANTS WHEN THE STATE, BOTH PROSECUTION AND JUDGE SEEK TO CONVICT
4 BY "LESSENING THE BURDEN OF PROOF" IN FAVOR OF THE PROSECUTION.

5 THIS POWER CALIFORNIA HAS ACCUMULATED FOR OVER TWO DECADES WITHOUT
6 A CHECK FROM THE FEDERAL CHARTER BECAUSE OF THE FUNDAMENTAL PRECEPT OF
7 DUAL FEDERALISM. .

8 HOWEVER IN CONJUNCTION WITH THIS PETITION FOR WRIT OF HABEAS CORPUS THE
9 PETITIONER HAS A PENDING §1983 IN THE U.S.D.C. ESTERN DIST. OF CALIFORNIA, WHERE
10 THE PETITIONER REQUESTS INJUNCTIVE RELIEF UPON THE STATE SEEKING TO HAVE THE
11 FEDERAL CHARTER ENJOIN THE CALIFORNIA SUPREME COURT TO ADDRESS THE RIPPENED
12 QUESTION THAT CALIFORNIA HAS LEFT OPENED INSPIE OF ITS LOWER COURTS STATE OF
13 CONFUSION, DISCORD, AND PUBLISHED ANTICIPATION (EXL) OF THEIR CASE AUTHORITY
14 ON THIS IMPORTANT FEDERAL QUESTION. SUCH ACTION FOR RELIEF IS PERMISSIBLE
15 UNDER THE DUE PROCESS CLAUSE.

16 IF A STATUTORY WRIT OF CERTIORARI IS UNATTAINABLE THE PETITIONER
17 ARGUES THAT HIS ATTACHED PETITION FOR A WRIT OF MANDAMUS THAT WAS
18 PARALLELED UP THE FEDERAL LADDER PROVIDES THIS COURT WITH THE AUTHORITY
19 TO ADDRESS JURISDICTION UPON THE CALIFORNIA SUPREME COURT.

20 THE CALIFORNIA SUPREME COURT, BY FEDERAL LAW, SHOULD BE ENJOINED BY
21 THE INJUNCTIVE RELIEF SAUGHT IN PETITIONER'S §1651(A) PETITION FOR A WRIT
22 OF MANDAMUS AND HIS "JURISDICTIONAL STATEMENT"^① SEEKING TO INVOKE THIS COURTS
23 APPELLATE JURISDICTION OVER HIS §1983 COMPLAINT PENDING PURSUANT TO RULE
24 18 OF THIS COURTS RULES. ALL OF WHICH THE PETITIONER SIMULTANEOUSLY SEEKS
25 TO FILE, ALONG WITH THE §2254(B) PETITION CORAM JUDGE. .

26 . ① PETITIONER HUMBLRY AWAITS THIS COURTS DISPOSITION OF HIS §1651 PETITION
27 FOR WRIT OF MANDAMUS UPON THE USDC ... AND THE REACTION OF THE USDC
28 CONCERNING HIS PENDING MOTION FOR RECONSIDERATION ON THEIR DENIED ORDER.

ARGUMENT

THE UNITED STATES CONSTITUTION'S 5TH AMENDMENT'S DOUBLE JEOPARDY CLAUSE PRECLUDED THE PROSECUTION (STATE) FROM APPEALING PETITIONER'S GRANTED WRIT OF HABEAS CORPUS THAT WAS PREMISED UPON THE TRIAL COURT'S JUDICIAL DETERMINATION THAT WAS EQUIVALENT TO AN ACQUITTAL ON THE ELEMENTS OF THE CRIME OF WHICH THE STATE UNLAWFULLY CONVICTED HIM UPON. DUE TO INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION AND AN ERRONEOUS INTERPRETATION OF GOVERNING LEGAL PRINCIPLES.

"THIS COURT HAS HELD," A JUDGMENT OF ACQUITTAL WHETHER BASED UPON A JURY VERDICT OF NOT GUILTY OR ON A RULING BY THE COURT THAT THE EVIDENCE IS INSUFFICIENT TO CONVICT, MAY NOT BE APPEALED AND TERMINATES THE PROSECUTION WHEN A SECOND TRIAL WOULD BE NECESSITATED BY A REVERSAL." UNITED STATES V. SCOTT 437 U.S.82, at 87-92

PETITIONER ARGUES THAT THE STATES 2016 APPEAL WAS FEDERALLY UNLAWFUL AND THE "DOUBLE JEOPARDY CLAUSE", WHICH GUARANTIES AGAINST GOVERNMENTAL OPPRESSION IS A RIGHT THAT THE STATE OF CALIFORNIA UNLAWFULLY DEPRIVED THE PETITIONER FROM ON MULTIPLE OCCASIONS.

THE INITIAL FILING OF THE APPEAL, THE REMAND AND RE-COMMITMENT OF THE PETITIONER BACK TO THE CUSTODY OF CALIFORNIA'S DEPARTMENT OF (EX M) CORRECTIONS AND REHABILITATION, ON A CONVICTION THAT HE HAS BEEN DISCHARGED FROM BY ORDER OF THE COURT AS FEDERALLY INVALID UNDER CHAPMAN V. CALIFORNIA (1967) 386 U.S.; THE SUBTERFUGE OF ANOTHER 2 pleadings, ORDER TO SHOW CAUSES OVER THE ISSUE OF PROCEDURAL DEFENSES THAT THE STATE HAS FAILED TO RAISE IN THE INITIAL HABEAS COURT, WHICH SHOULD HAVE BEEN BARRED BY REASON OF FURTURE. THE OPPRESSION IS ACCRUED DAILY AT ITS HOURLY ACCRUAL RATE.

1 ON FEBRUARY 10, 2016 THE CALIFORNIA SUPERIOR COURT GRANTED THE WRIT
2 OF HABEAS CORPUS, FINDING NEW DEVELOPMENTS OF CALIFORNIA CASE LAW EMPOWERED
3 THE COURT TO REACH THE MERITS OF THE PETITION'S CLAIMS. THE COURT REVERSED
4 PETITIONER'S CONVICTION, JUDGMENT, AND SENTENCE FINDING HIM FACTUALLY INNOCENT
5 OF MURDER UNDER CHAPMAN. THE PETITIONER WAS DISCHARGED INTO
6 THE CUSTODY OF THE SACRAMENTO COUNTY SHERIFFS DEPARTMENT AND
7 PRODUCED FOR A HEARING BEFORE THE SUPERIOR COURT.

8 THIS UNITED STATES SUPREME COURT'S HOLDING IN MARTIN LUTHER KING, JR.,
9 430 U.S. AT 571 RULED A DEFENDANT IS ACQUITTED ONLY WHEN "THE RULING
10 OF THE JUDGE, WHATEVER ITS LABEL, ACTUALLY REPRESENTS A RESOLUTION IN THE
11 DEFENDANT'S FAVOR, CORRECT OR NOT, OF SOME OR ALL OF THE FACTUAL
12 ELEMENTS OF THE OFFENSE CHARGED." AND AS DISCUSSED ANTE "MAY NOT
13 BE APPEALED AND TERMINATES THE PROSECUTION." UNITED STATES V. SCOTT 437
14 U.S. 82.

15 UPON THE PROSECUTION'S APPEAL THE PETITIONER FACED THE UNCERTAINTY AND
16 WAS SUBJECT TO THE ONGOING GOVERNMENTAL OPPRESSION THAT THE STATE'S APPEAL
17 WITH ITS VASTLY SUPERIOR RESOURCES PLACED UPON HIM.

18 CALIFORNIA DEPARTMENT OF CORRECTIONS INITIALLY REFUSED TO ACCEPT
19 CUSTODY OF THE PETITIONER BECAUSE AS THEY'VE ADMITTED (EX.M) IT WAS
20 RELEASED PER COURT ORDER DISCHARGE [IT] WAS NO LONGER UNDER CDC
21 JURISDICTION AND IT WAS UP TO [SHERIFFS OFFICE] IF THEY WANTED TO LET ME
22 GO." ANOTHER EMAIL PORTRAYS THEIR CONFUSION "SINCE HE WAS A COURT DISCHARGE
23 HE WAS NO LONGER UNDER CDC JURISDICTION, HE WOULD HAVE TO BE SENTENCED
24 WITH A NEW TERM AND GO THROUGH THE RECEPTION PROCESS." (EX.M)

25 WITH ITS VASTLY SUPERIOR RESOURCES THE STATE HAS UNLAWFULLY REMANDED
26 ME BACK TO CDCR'S UNLAWFUL CUSTODY. ACTIONS THAT THIS COURT IN SCOTT
27 SPECIFICALLY SAUGHT TO PROTECT DEFENDANTS FROM.

28 THE APPEAL WAS SET INTO MOTION BY STATE AND COUNTY OFFICERS THAT

1 ARE NAMED AS DEFENDANTS IN PETITIONERS §1983 NOW PENDING, AS THEY'VE CONSPIRED TO
2 SECURE THEIR UNLAWFUL CONVICTION AND PERPETUATE THEIR POWER TO CAPRICIOUSLY
3 ADMINISTER THEIR AIMS OF GAUGING TRIAL COURT ERRORS, THROUGH THE MEANS
4 OF ARBITRARY LAWS THAT IMPOSE AMBIGUOUS INTERPRETATIONS OF RULINGS
5 HELD BY THIS REVERED COURT.

6
7 WHEREFORE, PETITIONER, AN INDIGENT PRISONER, HUMBLY PRAYS THAT
8 IF IT PLEASES THIS COURT TO EXERCISE ITS DISCRETIONARY POWERS TO ENTER:
9 AN ORDER REFLECTING THE UNITED STATES SUPREME COURTS ADJUDICATION
10 OF THE PETITION ON ITS MERITS.

11 AN ORDER REFLECTING THE UNITED STATES SUPREME COURTS DIRECTIVES UPON
12 THE SECRETARY OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
13 TO IMMEDIATELY RELEASE JONATHAN ANDREW HAMPTON #G56415 ORDERING
14 THAT HE BE ENLARGED UPON HIS OWN RECOGNIZANCE UPON THEIR
15 DELIVERANCE OF THIS PRISONER BEFORE THE BENCH OF THE UNITED
16 STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA,
17 DISTRICT COURT JUDGE JOHN A. MENDEZ 28 USC §2243 S.Ct. RULE 36.3

18 VERIFICATION

19 I, JONATHAN HAMPTON, HAVE READ THIS PETITION AND HEREBY VERIFY THAT ALL
20 MATTERS ALLEGED AND PRESENTED THEREIN ARE TRUE, SO STATED, I CERTIFY UNDER
21 PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED AT
22 CENTINELA STATE PRISON IN IMPERIAL COUNTY IN THE STATE OF CALIFORNIA, ON
23 MARCH , 2020.

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25 DATED: MARCH 12, 2020

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RESPECTFULLY SUBMITTED,
Jonathan Hampton

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JONATHAN ANDREW HAMPTON
APPEARING IN PROPRIA PERSONA
CDCR No G56415
CENTINELA STATE PRISON
PO-BOX 911
IMPERIAL, CALIFORNIA
92251

1 THE ^{Return} PLAINTIFF SEEKS FOR THIS COURT TO EXERCISE ITS JURISDICTION THROUGH THE POWER
2 AND IMMEDIACY OF A ^{PROTECTIVE} TEMPORARY RESTRAINING ORDER AGAINST CDCR'S SECRETARY
3 RAFAEL DIAZ, FOR THE STATES' FEDERALILY ILLEGAL INCARCERATION OF THE PLAINTIFF, AND GRANT
4 THE PLAINTIFF A WRIT OF HABEAS CORPUS PENDING THE CONSIDERATION OF THE PETITION
5 FOR WRIT OF MANDAMUS AND THE ^{RETURN} ORDER TO SHOW CAUSE ^{in its position of the 22nd} BEFORE THIS COURT.

6 III. B. ARGUMENTS MADE FOR AN EXPEDITED PRELIMINARY RELIEF
7 OF THE COURTS ISSUANCE OF A WRIT OF HABEAS CORPUS, THROUGH
8 THE POWER AND IMMEDIACY OF A TEMPORARY RESTRAINING
9 ORDER AGAINST CDCR'S SECRETARY RAFAEL DIAZ.

10 THE STATES COURT OF APPEALS' REVERSAL OF THE GRANTED WRIT OF HABEAS CORPUS
11 WAS PREDICATED UPON THE HABEAS COURT'S ERROR IN FINDING THAT PEOPLE V. THOMAS (2013)
12 218 CAL. APP. 4TH 630, 633 AND PEOPLE V. MILLBROOK (2014) 222 CAL. APP. 4TH @ 1151-1152
13 ESTABLISHED NEW CALIFORNIA CASE LAW THAT DETAILS A TRIAL COURT'S FAILURE TO
14 SUA SPONTE INSTRUCT ON HEAT OF PASSION / PROVOCATION FEDERALLY REVERSABLE.
15 WHEN THE PRIOR CASE LAWS SPECIFICALLY ADDRESSES THE ERROR FEDERALLY REVERSABLE
16 WHEN THE TRIAL COURT (IN THOSE CASES) REFUSES TO GIVE THE "REQUESTED INSTRUCTION"

17 ALTHOUGH MILLBROOK SPECIFICALLY NOTES "WE CAN NOT PERCEIVE HOW THE RESOLUTION OF
18 WHETHER THE FEDERAL CONSTITUTION IS IMPLICATED BECAUSE OF THE JURY'S INABILITY TO DETERMINE
19 EACH ELEMENT OF THE OFFENSE WOULD DEPEND ON WHETHER A HEAT OF PASSION INSTRUCTION WAS
20 REJECTED AFTER A REQUEST OR NOT GIVEN SUA-SPONTE." (FOOTNOTE #12) IBID. THIS COURT HAS
21 HELD A HIGH REGARD OVER THE IMPORTANCE OF THE ISSUE. (SEE APPENDIX PAGE 67 FN 12)

22 THE PLAINTIFFS HABEAS COURT NOTES NO RECORD REFLECTS WHO REQUESTED THE INSTRUCTION
23 BUT SHOWS IT WAS WITHDRAWN BY HIGHT. ^(EX A) SO AS A RESULT, THE PLAINTIFF REMAINS IN THE
24 UNLAWFUL CUSTODY OF THE STATE, OVER A LACK OF RECORD, WHEN THE OBVIOUS DEPRIVATION
25 OF HIS FEDERAL RIGHTS REMAINS DISCLOSED, AND UNADDRESSED. I.A.C. HAS BEEN ^(EX A)
26 PRESERVED AS HIS INITIAL CLAIM AS AN EXCEPTION TO THE PROCEDURAL BAR AEDDA, AND
27 THE CALIFORNIA SUPREME COURT ON OCTOBER 31, 2018 GRANTED PLAINTIFFS WRIT OF REVIEW
28 DIRECTING THE COURT OF APPEAL TO ADDRESS MY CLAIMS FOR RELIEF UNDER THIS EXCEPTION
TO THE PROCEDURAL BAR, BUT FAILS TO ACT UPON THE LOWER COURTS DISCORD AND

1 AND THEIR ANTICIPATED UNIFICATION. SEE EX A AND EX L (P8 AND P. 66) appendix
2 THE CALIFORNIA SUPREME COURT'S INACTION AND LACK OF LEGISLATIVE INTENT
3 OVER SUCH AN IMPORTANT ISSUE IS PRECISELY THE "GRAY AREA" THAT HARMS, INJURES,
4 AND DAILY DEPRIVES THE PLAINTIFF FROM HIS UNITED STATES CONSTITUTIONAL RIGHTS.
5 TO DUE PROCESS OF LAW, DEPRIVATION OF LIFE AND LIBERTY, CRUEL AND UNUSUAL
6 PUNISHMENT, INVOLUNTARY SERVITUDE, AND THE PLAINTIFF FEELS AS IF HIS HABEAS
7 PROCEEDINGS HAVE BEEN CONDUCTED IN BAD FAITH AND HAVE BEEN PLACED TWICE
8 IN JEOPARDY. OVER THE SAME ISSUE FROM 2016 UNTIL NOW 2019.

9 THE COUNTY OF SACRAMENTO'S SUPERIOR COURT HAS FAILED TO ENSURE THE PLAINTIFF
10 "THE APPLICATION OF THE DUE PROCESS CLAUSES OF THE CALIFORNIA CONSTITUTION (CAL.
11 CONST. ART. I § 7(a) CAL. CONST. ART I § 15), MUST BE DETERMINED IN A CONTEXT OF THE INDIVIDUAL'S
12 DUE PROCESS LIBERTY INTEREST IN FREEDOM FROM ARBITRARY ADJUDICATIVE PROCEDURES. THIS,
13 WHEN A PERSON IS DEPRIVED OF A STATUTORILY CONFERRED BENEFIT, DUE PROCESS
14 ANALYSIS MUST START NOT WITH A JUDICIAL ATTEMPT TO DECIDE WHETHER A STATUTE HAS
15 CREATED AN ENTITLEMENT THAT CAN BE DEFINED AS LIBERTY OR PROPERTY, BUT WITH
16 AN ASSESSMENT OF WHAT PROCEDURAL PROTECTIONS ARE CONSTITUTIONALLY REQUIRED
17 IN LIGHT OF GOVERNMENTAL AND PRIVATE INTERESTS AT STAKE. THE DUE PROCESS
18 SAFEGUARDS REQUIRES FOR PROTECTION OF AN INDIVIDUAL'S STATUTORY INTERESTS
19 MUST BE ANALYZED IN THE CONTEXT OF THE PRINCIPLE THAT FREEDOM FROM
20 ARBITRARY ADJUDICATIVE PROCEDURES IS A SUBSTANTIVE ELEMENT OF ONE'S
21 LIBERTY." PEOPLE V. RAMIREZ (CAL. SEP. 7, 1979) 25 CAL. 3d 240, 158 CAL. RPT. 316, 599 P.2d 623
22 1979. SCHULTZ V. REGENTS OF UNIVERSITY OF CALIFORNIA (CAL. APP. 3d DIST OCT. 3, 1984) 766 CAL. RPT. 910, 1984 CAL. APP. 3d.

24 IN CONCLUSION THE HABEAS COURT INITIALLY FOUND GOOD CAUSE AND IN ANY
25 EVENT ACTED PURSUANT TO THE IMPERATIVE OF CORRECTION OF A FUNDAMENTAL
26 MISCARRIAGE OF JUSTICE WHEN THAT COURT ULTIMATELY FOUND THAT EVOLVING LAW
27 EXPOSED THE FACT THAT THE TRIAL COURT'S FAILURE TO INSTRUCT ON PROVOCATION/HEAT OF PASSION
28 RELIEVED THE JURY OF FINDING A NECESSARY ELEMENT MALICE IN ORDER TO CONVICT HIM OF

1 MURDER, AND IT IS THE CORE REPRESENTATION OF THE PLAINTIFFS COMPLAINT THAT THE
2 DEFENDANTS CONSPIRED TO ARBITRARILY CONVICT THE PLAINTIFF BY THEIR OMISSION OF TWO
3 INSTRUCTIONS CRUCIALLY RELEVANT TO HIS DEFENSE, AND UNWILLINGLY APPEARED THE WRIT.

4 THE UNITED STATES SUPREME COURT HAS STATED "THE WRIT OF HABEAS CORPUS
5 IS THE FUNDAMENTAL INSTRUMENT FOR SAFEGUARDING INDIVIDUAL FREEDOM AGAINST
6 ARBITRARY AND LAWLESS STATE ACTION." (HARRIS V. NELSON (1969) 394 U.S. 286, 290-291)
7 AND PROVIDES "A CRITICAL CHECK ON THE EXECUTIVE, ENSURING THAT IT DOES NOT DETAIN
8 INDIVIDUALS EXCEPT IN ACCORDANCE WITH LAW." (Hamdi v. Rumsfeld 542 U.S. 507-525.
9 (2004)). "IT'S CAPACITY TO REACH ALL MANNER OF ILLEGAL DETENTION -- IT'S ABILITY TO CUT
10 THROUGH BARRIERS OF FORM AND PROCEDURAL MAZES -- HAVE ALWAYS BEEN
11 EMPHASIZED AND JEALOUSLY GUARDED BY COURTS AND LAWMAKERS." (HARRIS V. NELSON,
12 SUPRA, @ P. 290.)

13 **III C. 28 USCS § 2243** EMPOWERS THIS COURT TO ISSUE A WRIT
14 OF HABEAS CORPUS EX PARTE AND UNDER THE CONTEXT OF
15 AN EXPEDITED REVIEW IN RELEVANT PART IT READS.

16 28 USCS § 2243 "A COURT, JUSTICE OR JUDGE ENTERTAINING AN APPLICATION FOR WRIT OF
17 HABEAS CORPUS SHALL FORTHWITH AWARD THE WRIT... THE WRIT... SHALL BE DIRECTED TO
18 THE PERSON HAVING CUSTODY OF THE PERSON DETAINED. IT SHALL BE RETURNED WITHIN THREE
19 DAYS UNLESS FOR GOOD CAUSE ADDITIONAL TIME, NOT EXCEEDING 20 DAYS, IS ALLOWED. THE
20 PERSON TO WHOM THE WRIT... IS DIRECTED SHALL MAKE A RETURN CERTIFYING THE TRUE CAUSE OF
21 DETENTION. WHEN THE WRIT OR ORDER IS RETURNED A DAY SHALL BE SET FOR HEARING, NOT
22 MORE THAN 5 DAYS AFTER THE RETURN UNLESS FOR GOOD CAUSE ADDITIONAL TIME IS ALLOWED.
23 UNLESS THE APPLICATION FOR THE WRIT AND THE RETURN PRESENT ONLY ISSUES OF LAW THE PERSON
24 TO WHOM THE WRIT IS DIRECTED SHALL BE REQUIRED TO PRODUCE AT THE HEARING THE BODY
25 OF THE PERSON DETAINED." -- (PLEASE SEE EX A. CACRS legal status summary.
26 PG. 71) "WHERE FACTS WERE NOT IN DISPUTE, SO THERE WAS BUT QUESTION OF LAW, WRIT ISSUED IN
27 BEGINNING." (EX PARTE BECK (1917), DC MONT) 245 F 967.
28

THE PETITIONER CLAIMS HIS STANDING BEFORE THIS COURT
SATISFIES THE COURT'S CAPACITY TO CONSIDER EXPEDITED
REVIEW PURSUANT TO 28 USCS § 1657

28 USCS § 1657 "EACH COURT OF THE UNITED STATES SHALL DETERMINE THE
ORDER IN WHICH CIVIL ACTIONS ARE HEARD AND DETERMINED, EXCEPT THAT THE COURT
SHALL EXPEDITE THE CONSIDERATION OF ANY ACTION FOR TEMPORARY OR PRELIMINARY
INJUNCTIVE RELIEF, OR ANY OTHER ACTION IF "GOOD CAUSE" THEREFORE IS SHOWN. FOR
PURPOSES OF THIS SECTION "GOOD CAUSE" IS SHOWN IF A RIGHT UNDER THE CONSTITUTION
OF THE UNITED STATES WOULD BE MAINTAINED IN A FACTUAL CONTEXT THAT INDICATES
THAT A REQUEST FOR EXPEDITED CONSIDERATION HAS MERIT."

THE PETITIONER SEEKS TO DRAW THE COURT'S ATTENTION TO THE
FOLLOWING DOCUMENTS THAT § 2254(C)(1) AND (G) AND FED. RULES OF EVID.
201(b) EMPOWERS THIS COURT TO ACCEPT AS ADMISSIBLE AND "SHALL BE
PRESUMED TO BE CORRECT" - (STATE COURT DOCUMENTS) APPENDIX ATTACHED TO
THE PETITION.

1. SUPERIOR COURTS GRANTED WRIT OF HABEAS CORPUS EX A
2. CALIFORNIA COURT OF APPEALS TWO OPINIONS REVERSING
THE GRANTED WRIT. THE SECOND WITH REMITTUR. EX C AND D
3. SUPERIOR COURTS DENIAL AT WHOLE IN RESPONSE EX E
TO REMITTUR
4. CALIFORNIA SUPREME COURT'S GRANT OF REVIEW WITHOUT EX G
ADDRESSING CENTRAL SUBMISSION OF A TRIAL COURT'S FAILURE
TO INSTRUCT SUA-SPONTE ON PASSION AS IT RELATES TO
MALICE.
5. AN EXCERPT OF THE CALIFORNIA COURT OF APPEALS PUBLISHED OPINION EX L
RELATIVE TO THE QUESTION.
6. CALIFORNIA DEPARTMENT OF CORRECTIONS LEGAL STATUS SUMMARY EX M
7. SUPERIOR COURTS RECORDED MINUTES WITHDRAWING THE INSTRUCTION EX N
AND THE JURY'S QUESTION UPON DEFINITION OF MALICE.

1 THE UNDESIRABLE FACTS PRESENTED BEFORE THIS COURT EXPLICITLY DETAILS
2 THE STATE'S ABUSE OF DISCRETION AND USURPATION OF JUDICIAL POWER
3 ON MULTIPLE OCCASIONS.

4 THE PETITIONER HUMBLY REQUESTS THIS HIGH COURT TO GRANT
5 PETITIONER RELIEF EX PARTE PURSUANT TO S.Ct. RULE 36.3, AND
6 GRANT A PROTECTIVE ORDER RELEASING THE PRISONER JONATHAN
7 ANDREW HAMPTON. CDK No. G56415 UPON HIS OWN RECOGNIZANCE.

8 ACTIONS MADE BY THIS COURT, THAT WOULD BE CONSISTENT
9 WITH JUSTICE SOTOMAYOR'S OPINION IN EVANS V. MICHIGAN 11/6/12
10 568 U.S. 313

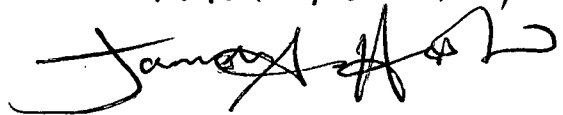
11 VERIFICATION

12 I, JONATHAN ANDREW HAMPTON, DECLARE UNDER PENALTY OF PERJURY
13 THAT I AM THE PETITIONER IN THE ABOVE ENTITLED ACTION. I HAVE READ
14 THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE
15 SAME IS TRUE OF MY KNOWLEDGE.

16 EXECUTED ON MARCH 12, 2020 AT CENTINELA STATE PRISON
17 IMPERIAL, CALIFORNIA 92251.

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19 DATED: MARCH 12, 2020

20 Respectfully Submitted,

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