

19-8033

IN THE SUPREME COURT OF THE UNITED STATES

IN RE: JONATHAN ANDREW HAMPTON.

U.S.C.A. 7TH CIR. NO. 19-73047

JONATHAN ANDREW HAMPTON,
PETITIONER,

U.S.D.C NO. 2:19-CV-00851 JAM-88
EASTERN DISTRICT OF CALIFORNIA,
SACRAMENTO.

V.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA, SACRAMENTO,

RESPONDENT,

STATE OF CALIFORNIA; ET AL.,

REAL PARTIES IN INTEREST.

ON PETITION FOR WRIT OF MANDAMUS

S.C.T. RULE 20.1 AND 28 USCS §1651(A)

28 USCS §1331

IF PETITION FOR WRIT OF MANDAMUS

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

II. QUESTIONS PRESENTED

I.

CAN I, JONATHAN ANDREW HAMPTON, AN INDIGENT PRISONER, §1651(A) PETITIONER AND 42 USCS §1983 CIVIL RIGHTS PLAINTIFF, APPEARING IN PROPRIA PERSONA BEFORE THE BAR OF THIS REVERED COURT, REQUEST THAT THE COURT INVOKE ITS SUPERVISORY POWER AND EXERCISE ITS DISCRETIONARY POWERS BY GRANTING REVIEW OF THE PETITION FOR WRIT OF MANDAMUS. UNDER THE PROVISION FOUND IN THE SUPREME COURT RULE 20.1, THAT CAN BE EXERCISED IN THIS COURTS APPELLATE JURISDICTION.

WHEN, THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT DENIED THE PETITION FOR WRIT OF MANDAMUS THAT WAS TIMELY FILED AND DENIED ON DECEMBER 17TH, 2019. (EX A.)

WHERE, THE PETITIONER SAUGHT TO HAVE THE U.S.C.A. ISSUE AN ORDER DIRECTING THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA TO GRANT PETITIONER'S TIMELY FILED PETITION FOR WRIT OF MANDAMUS. THAT WAS SEPERATELY FILED AS AN ATTACHMENT IN OPERATION WITH, AND IN CONJUNCTION WITH, PETITIONER / PLAINTIFFS ONGOING §1983 CIVIL RIGHTS PROCEEDINGS. THAT WAS DENIED ON OCTOBER 7TH, 2019 (EX B.)

PETITIONER / PLAINTIFF SEEKS INJUNCTIVE RELIEF FROM THE U.S.A.C. IN THE FORM OF MANDAMUS §1651(A)(B) TO ENJOIN THE CALIFORNIA SUPREME COURT TO ASSUME JURISDICTION OVER PETITIONER / PLAINTIFFS RIGHTFULLY PRESERVED FEDERAL QUESTIONS THAT CALIFORNIA HAS LEFT OPEN AND UNADDRESSED FOR OVER 22 YEARS. UNDER §1331

BY GRANTING THE PETITION, DIRECTING THE CALIFORNIA SUPREME COURT TO VACATE ITS ORDER GRANTING REVIEW IN CASE NO. S250833 (EX C) REMANDING THE CAUSE DOWN TO THE CALIFORNIA COURT OF APPEAL, 3RD APPELLATE DISTRICT CASE NO. C087151 WITH DIRECTIONS THAT WERE TOTALLY VOID OF

1 ADDRESSING PETITIONERS CENTRAL SUBMISSION OF HIS FEDERALIZED CLAIM.
2 THAT ARE NOW VENERATED IN SOLEMNITY CORAM JUDICE.

3 II

4 DOES THE CALIFORNIA SUPREME COURTS HOLDING IN PEOPLE V. BREVERMAN
5 (1998), SUPRA, 19 CAL. 4TH AT PG. 168 AFFIRMING "THAT THE RULE REQUIRING
6 SUA SPONTE INSTRUCTIONS ON ALL LESSER NECESSARILY INCLUDED OFFENSES
7 SUPPORTED BY THE EVIDENCE [IN A NON CAPITAL CASE] DERIVES EXCLUSIVELY
8 FROM CALIFORNIA LAW" (P. 169) INADVERTENTLY IMPOSE AN UNLAWFUL
9 STATE OF AMBIGUITY WHEN FACED WITH THE FEDERAL DILEMMA THAT
10 HAMPTON NOW PROPERLY PRESENTS.

11 III

12 DOES THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION,
13 REQUIRE PECULAIR CALIFORNIA CRIMINAL JURY INSTRUCTIONS THAT
14 INHERENTLY POSSESS PRESUMPTIVE QUALITIES, IN CERTAIN INSTANCES
15 THAT WOULD CARRY A FEDERALLY AUTHORIZED DETACHMENT FROM
16 A REVIEWING COURT'S ARBITRARILY CAPRICIOUS ABILITY TO FIND
17 A LACK OF SUCH A CATEGORIZED INSTRUCTION, WHETHER OMITTED
18 BY REJECTION OR NOT GIVEN SUA SPONTE, BEING SUBJECT TO
19 CALIFORNIA'S HARMLESS ERROR STANDARD FOR ANALYSIS WHILE ASSESSING
20 PREJUDICE, WHEN THE UNITED STATES SUPREME COURT HAS
21 DETERMINED CERTAIN OMISSIONS OF LESSER INCLUDED OFFENSE
22 INSTRUCTIONS AS "STRUCTURAL ERROR" AND FEDERALLY REVERSIBLE
23 UNDER CHAPMAN AS PREJUDICE IS AUTOMATICALLY ATTACHED BY
24 THE JURYS INABILITY TO DELIBERATE OVER THE OMITTED INSTRUCTIONS
25 INHERENTLY PRESUMPTIVE QUALITIES THAT CAN BE EITHER
26 ATTACHED TO "AN ELEMENT OF THE OFFENSE CHARGED" OR ATTACHED
27 TO "AN ELEMENT OF THE DEFENSE THEORY OF THE CASE WITH WHICH
28 THE DEFENDANT HAS BUILD HIS DEFENSE UPON."

IV

DOES CALIFORNIA TRIAL COURTS EVER HAVE A DUTY UNDER THE FEDERAL CONSTITUTION TO GIVE SUA SPONTE A HEAT OF PASSION INSTRUCTION, WHERE WARRANTED BY THE EVIDENCE, IN A NON CAPITAL CASE, AS THE LESSER INCLUDED OFFENSE INSTRUCTION ON VOLUNTARY MANSLAUGHTER, UNDER THE THEORY OF PASSION PROVOCATION, INHERENTLY RELATES TO THE PROSECUTIONS BURDEN OF PROVING AN ELEMENT OF THE OFFENSE CHARGED.

V

WHEN A TRIAL COURT FAILS TO SUA SPONTE INSTRUCT UPON THE CATEGORICAL SELF DEFENSE WHILE RESISTING THE COMMISSION OF A ROBBERY, WHEN THE WHOLE TRIAL AND THE DEFENDANTS ENTIRE DEFENSE WAS BUILD UPON THIS OMITTED INSTRUCTION, DOES THE DEFENDANT IN THAT CASE HAVE A FEDERALLY PROTECTED RIGHT TO DUE PROCESS AND IN HIS PURSUIT FOR POST CONVICTION COLLATERAL RELIEF, CAN THOSE RIGHTS BE PROTECTED IN THE STATE OF CALIFORNIA.

VI

DOES THE 5TH AMENDMENT TO THE UNITED STATES CONSTITUTIONS IN ALIENABLE RIGHTS THAT ARE INTERPRETED BY THE UNITED STATES SUPREME COURTS RULINGS CONFER UPON THIS COURT THAT THE DOUBLE JEOPARDY CLAUSE PRECLUDES THE PROSECUTION (STATE) FROM APPEALING A PETITIONER'S GRANTED WRIT OF HABEAS THAT WAS PREMISED UPON A JUDICIAL DETERMINATION, THAT WAS EQUIVALENT TO AN ACQUITTAL ON ONE OR MORE OF THE ELEMENTS OF THE CRIME OF WHICH THE STATE ILLEGITIMATELY CONVICTED HIM UPON. AND DOES THAT FINDING OF INSUFFICIENCY OF EVIDENCE TO SUPPORT THE CONVICTION AND OR

1 AN ERRONEOUS INTERPRETATION OF GOVERNING LEGAL PRINCIPLES
2 SUBSEQUENTLY TERMINATE THE PROSECUTION FROM SEEKING OUT
3 ANY PROCESS THAT WILL FURTHER SEEK TO INFLICT PUNISHMENT
4 UPON THE DEFENDANT WHOM" ALTHOUGH CRIMINALLY CULPABLE MAY
5 NOT BE PUNISHED BECAUSE OF A PROCEDURAL ERROR. "EVANS V
6 MICHIGAN :: 568 U.S. 313 THAT WAS DELIBERATED BY THE STATE.
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CALIFORNIA CASE LAWS RELAVENT TO
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PEOPLE V THOMAS (2013) 218 CAL APP. 4TH 630

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PEOPLE V. WATSON (1956) [46 CAL. 2D 818, 886]

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SUPREME COURT MINS: PEOPLE V. THOMAS, AUGUST 29, 2012 S203557, PG 1518

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V. 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-cv-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 SVR 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	HONORABLE CURTIS M. FIORINI - ORDER TO SHOW CAUSE
2016 - 02 - 10 (EX G)	GRANTED WRIT OF HABEAS CORPUS FOUNDED UPON THE DETERMINATION THAT NEW CALIFORNIA CASE LAW EXPOSES A TRIAL COURTS FAILURE TO SVR-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 E)

C.O.A GRANTS STATES APPEAL w/6 ORAL ARGUMENT
AND VACATES THE ORDER.

2017-09-13 (Ex F)

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.#S244905
ARGUING INJUSTICE TO THE REVERSAL OF THE WRIT

2018-03-12

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

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 C)

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 J. 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 PAUPERIS

2019-07-24 (EX B)

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 INTERJUDICIAL RELIEF REQUESTING EXPEDITED REVIEW

8 2019-10-07 (Ex B) 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)(C)
15 AND RULE 52 (a)(1)(5); FILED FRAP. 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, WHOSE INACTION HAS
CAUSED DISCORD AND CONFUSION IN PETITIONER / PLAINTIFFS ONGOING
STATE HABEAS PROCEEDINGS. CA. SUPREME CT# 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 SCHEDULE

2019-11-17 APPELLANT MAILED / FILED "EMERGENCY MOTION" CIR. R. 27B
• "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 EXBANC"

2019-12-03 (EX D)

USCA ORDERED HOLDING APPEAL CASE NO. 19-172
19-17240 IN ABSTAINANCE 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 A)

USCA ORDERED APPELLANT'S PETITION FOR
WRIT OF MANDAMUS CASE NO. 19-73047
DENIED

2019-12-20

USCA FILED APPELLANT'S 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

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. CT. RULE 20.4

APPLICATION FOR EXTRAORDINARY WRIT OF MANDAMUS

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

JURISDICTIONAL STATEMENT

~~UNDER S. CT. RULE 18~~

1 II. STATEMENT FOR THE BASIS FOR JURISDICTION

2 THE PETITIONER SEEKS FROM THIS COURT ITS ISSUANCE OF AN EXTRAORDINARY
3 WRIT OF MANDAMUS. INVOKING ITS APPELLATE JURISDICTION SUPREME COURT RULE 20.1

4 THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ENTERED
5 AN ORDER DENYING PETITIONER'S PETITION FOR WRIT OF MANDAMUS ON
6 DECEMBER 17, 2019. (EX A)

7 THIS PETITION IS FILED UNDER RULE 11 OF THIS COURT AS THE CONTENTS
8 WITHIN THIS PETITION ARE CLOSELY RELATED TO PETITIONER'S, § 2254 (B)
9 PETITION FOR A WRIT OF HABEAS CORPUS, HIS § 1983 CIVIL RIGHTS ACTION
10 FILED WITHIN THE UNITED STATES DISTRICT COURT, AND HIS PENDING APPEAL
11 THAT WAS STAYED ON DECEMBER 3, 2019. BY THE UNITED STATES COURT
12 OF APPEAL FOR THE NINTH CIRCUIT. (EX D) PURSUANT TO F.R.A.P RULE 4(A)(4)

13 ~~THE~~ THE STATUTORY PROVISIONS BELIEVED TO CONFER ON THIS COURT

14 JURISDICTION

15 28 USCS § 1651 (A) "THE SUPREME COURT AND ALL COURTS ... MAY ISSUE ALL WRITS NECESSARY
16 OR APPROPRIATE IN AID OF THEIR RESPECTIVE JURISDICTIONS AND AGREEABLE TO THE USAGES
17 AND PRINCIPLES OF LAW."

18 28 USCS § 1331 "THE DISTRICT COURTS SHALL HAVE ORIGINAL JURISDICTION OF ALL
19 CIVIL ACTIONS ARISING UNDER THE CONSTITUTION, LAWS, OR TREATISE OF THE UNITED
20 STATES"

21 42 USCS § 1983 "ANY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE,
22 REGULATION, CUSTOM OR USAGE, OF ANY STATE TERRITORY ... SUBJECTS OR CAUSES TO BE
23 SUBJECTED, ANY CITIZEN OF THE UNITED STATES ... TO THE DEPRIVATION OF ANY
24 RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE
25 LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY, OR OTHER
26 PROPER PROCEEDING FOR REDRESS..."

27 CONGRESS HAS PROVIDED 42 USCS § 1983 AS AN EXCEPTION TO 28 USCS § 2283
28 ANT-INJUNCTION ACT - PETITIONER ADDRESSED THIS CONTENTION REGARDING ABSTENTION DOCTRINES

1 28 USCS § 1257 STATE LAW REPUGNANT TO THE UNITED STATES
2 CONSTITUTION AND LAWS.

3 28 USCS § 1657 "EACH COURT OF THE UNITED STATES SHALL DETERMINE THE
4 ORDER IN WHICH CIVIL ACTIONS ARE HEARD AND DETERMINED, EXCEPT THAT THE COURT SHALL
5 EXPEDITE THE CONSIDERATION OF ANY ACTION FOR TEMPORARY OR PRELIMINARY
6 INJUNCTIVE RELIEF OR ANY OTHER ACTION IF "GOOD CAUSE" THEREFORE IS SHOWN. FOR
7 PURPOSES OF THIS SECTION "GOOD CAUSE" IS SHOWN IF A RIGHT UNDER THE CONSTITUTION OF
8 THE UNITED STATES WOULD BE MAINTAINED IN A FACTUAL CONTEXT THAT INDICATES THAT
9 A REQUEST FOR EXPEDITED CONSIDERATION HAS MERIT."

10 ~~THE~~ THE CONSTITUTIONAL PROVISIONS, TREATIES, AND STATUTES
11 THAT ARE INVOLVED IN THIS CASE

12 THE BILL OF RIGHTS AND AMENDMENTS TO THE CONSTITUTION

13 U.S. CONST. 5TH AMENDMENT ... "NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME
14 OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; "... "NOR BE DEPRIVED OF LIFE,
15 LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; "...

16 U.S. CONST. 6TH AMENDMENT ... "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL
17 ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT
18 WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY
19 ASCERTAINED BY LAW... AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE."

20 U.S. CONST. 8TH AMENDMENT ... "NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED..."

21 U.S. CONST. 13TH AMENDMENT "NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE,
22 EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY
23 CONVICTED, SHALL EXIST WITHIN THE UNITED STATES..."

24 U.S. CONST. 14TH AMENDMENT "ALL PERSONS BORN OR NATURALIZED IN THE
25 UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE
26 UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE
27 OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF
28 CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON

1 OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO
2 ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

3 UNITED STATES TREATIES REGARDING "STRUCTURAL ERROR" WHEN FAILURE
4 TO INSTRUCT JURY TO CONSIDER WHETHER GOVERNMENT PROVED ONE
5 ELEMENT OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT
6 IN A NON CAPITOL CASE.

7 MUIHANEY V. WILBUR (1975) 421 U.S. 684, 704 [44 LED 2d 508, 95 S.Ct. 188]

8 "FEDERAL DUE PROCESS REQUIRES THE PROSECUTION TO PROVE BEYOND A REASONABLE
9 DOUBT THE ABSCENCE OF THE HEAT OF PASSION ON SUDDEN PROVOCATION WHEN
10 THE ISSUE IS PROPERLY PRESENTED IN A HOMICIDE CASE."

11 FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE SECTION 31.3 IS
12 COMPRISED OF THIS COURTS REVERED TREATISE THAT "DESIGNATES THE RIGHTS
13 LISTED BELOW (IN THAT SECTION) AS "STRUCTURAL" CONSTITUTIONAL RIGHTS THAT ARE
14 "SO BASIC TO A FAIR TRIAL THAT THEIR INFRACTION CAN NEVER BE TREATED
15 AS HARMLESS ERROR", OR AS SO PRONE TO PREJUDICE, WHEN VIOLATED, THAT
16 PREJUDICE ALREADY HAS BEEN PROVED OR SHOULD BE PRESUMED: CHAPMAN
17 V. CALIFORNIA, 386 U.S. 18, 23 (1967) LISTING COMPILATION OF PRIOR CASES HOLDING
18 ERRORS TO BE PER SE PREJUDICIAL.

19 UNDER WHICH, ITS SUBSECTION (8) STATES: "THE RIGHT TO A JURY
20 VERDICT WITHIN THE MEANING OF THE SIXTH AMENDMENT" WHICH, IN LIGHT OF
21 THE FIFTH AMENDMENT REQUIREMENT OF PROOF BEYOND A REASONABLE DOUBT
22 IS THE RIGHT TO "A JURY VERDICT OF GUILT BEYOND A REASONABLE DOUBT,
23 SULLIVAN V. LOUISIANA, 508 U.S. 275, 279-80 (1993) THIS RIGHT INCLUDES:

24 (A) THE FULL PROTECTION OF THE REASONABLE DOUBT STANDARD AT TRIAL
25 FULMINATE, SUPRA, 499 U.S. AT 291 (CITING COOL V. UNITED STATES, 409 U.S. 100, 109 (1972)
26 AND IN RE WINSHIP, 397 U.S. 358, 364, (1970)

27 INCLUDING THE RIGHT TO A JURY INSTRUCTION ON THE STATES BURDEN TO
28 PROVE ALL ELEMENTS OF ALL CHARGES BEYOND A REASONABLE DOUBT. FULMINATE,

1 SUPRA, 499 U.S. at 291; JACKSON V. VIRGINIA 443 U.S. 307, 320 n14 (1979);
2 LANIGAN V. MALONEY, 853 F.2d 40, 49-50, (1st cir 1988), CERT DENIED, 488 U.S. 1007 (1998)
3 (FAILURE TO INSTRUCT JURY AS TO REASONABLE DOUBT STANDARD IS REVERSABLE WITHOUT
4 REGARD TO SHOWING OF PREJUDICE) SEE ALSO UNITED STATES V. GAUDIN, 515 U.S. 506, 510-
5 512, 514, 520 (1995) (5TH AND 6TH AMENDMENTS "REQUIRE CRIMINAL CONVICTIONS TO REST
6 UPON A JURY DETERMINATION THAT THE DEFENDANT IS GUILTY OF EVERY ELEMENT OF
7 THE CRIME WITH WHICH HE IS CHARGED, BEYOND A REASONABLE DOUBT." FN OMITTED
8 AND GIVE "A CRIMINAL DEFENDANT THE RIGHT TO DEMAND [INSTRUCTIONS REQUIRING]
9 THAT A JURY FIND HIM GUILTY OF ALL ELEMENTS OF THE CRIME WITH WHICH HE IS
10 CHARGED" (collecting Authority); PRINCIPLE EVEN APPLIES IF ELEMENT OF OFFENSE SUCH
11 AS "MATERIALITY" OF FALSE STATEMENT PRESENTS MIXED QUESTION OF LAW AND FACT, OR
12 REQUIRES JURY "NOT MERELY TO DETERMINE THE FACTS, BUT TO APPLY THE LAW TO THOSE
13 FACTS": TREATING VIOLATIONS OF THESE RIGHTS AS POTENTIALLY "HARMLESS ERROR" IS
14 "UNFORTUNATE ANOMALY"); UNITED STATES V. GAUDIN, 28 F.3d 943, 951 (9TH CIR. 1994),
15 AFF'D, 515 U.S. 506 (1995) (UNCONSTITUTIONAL WITHDRAWAL FROM JURY OF QUESTION WHETHER
16 GOVERNMENT PROVED CRITICAL ELEMENT OF OFFENSE "CAN NOT BE HARMLESS"). CF. UNITED
17 STATES V. GAUDIN, SUPRA, 515 U.S. at 523, 526 (REHNQUIST, C.J., CONCURRING) (FAILURE
18 TO INSTRUCT JURY TO CONSIDER WHETHER GOVERNMENT PROVED ONE ELEMENT OF OFFENSE
19 BEYOND A REASONABLE DOUBT WAS "STRUCTURAL AND PLAIN" ERROR UNDER
20 CIRCUMSTANCES OF CASE BUT MIGHT BE "HARMLESS" UNDER OTHER CIRCUMSTANCES; "COURT
21 TODAY HAS NO OCCASION TO REVIEW THE COURT OF APPEALS' CONCLUSION THAT THE
22 CONSTITUTIONAL ERROR HERE 'CANNOT BE HARMLESS'").

23 THAT DOES NOT DILUTE THE PROTECTION AFFORDED BY THE "REASONABLE DOUBT"
24 STANDARD. SEE NEDER V. UNITED STATES, SUPRA, 527 U.S. at 8 ("DEFECTIVE REASONABLE
25 DOUBT INSTRUCTION" IS "STRUCTURAL [ERROR], 'AND THUS [U] SUBJECT TO AUTOMATIC
26 REVERSAL('): JOHNSON V. UNITED STATES, SUPRA, 520 U.S. at 461 ("ERRONEOUS DEFINITION
27 OF 'REASONABLE DOUBT' [IS NEVER HARMLESS BECAUSE IT] VIOLATES] ALL OF THE JURY'S
28 FINDINGS [AND] ONE COULD ONLY SPECULATE WHAT A PROPERLY CHARGED JURY MIGHT

1 HAVE DONE"): SULLIVAN V. LOUISIANA, SUPRA, 508 U.S. AT 278.

2 (B) A BAN ON "DIRECTED VERDICTS FOR THE STATE"; SEE UNITED STATES V.
3 GAUDIN, SUPRA, 515 U.S. AT 520 (PRIOR DECISION HOLDING THAT JURY INSTRUCTIONS
4 "EFFECTIVELY ... ORDER[ING] THE JURY TO CONVICT" MAY BE HARMLESS "HAS PROVED AN
5 UNFORTUNATE ANOMALY IN LIGHT OF SUBSEQUENT CASES," (CRITICIZING HORNING V.
6 DISTRICT OF COLUMBIA, 254 U.S. 135 (1920)): SULLIVAN V. LOUISIANA, SUPRA, 508 U.S.
7 AT 277. SEE ALSO NEDER V. UNITED STATES, SUPRA, 527 U.S. AT 17 n.2.

8 (C) THE RIGHT TO AN UNANIMOUS JURY VERDICT. SINCOX V. UNITED STATES, 571
9 F.2d 876, 879 (5th Cir. 1978).

10 UNITED STATES TREATIES REGARDING RULE ON A DEFENDANT'S CONSTITUTIONAL RIGHT
11 TO HAVE A JURY INSTRUCTED UPON ALL UNCHARGED LESSER RELATED OFFENSES
12 IN A CAPITAL CASE - CALIFORNIA'S RELIANCE UPON IN BREVERMAN'S MAJORITY.

13 BECK V. ALABAMA (1960) 447 U.S. 625, 638, 65 LEd 2d. 392, 100 S.Ct. 2882,
14 WHERE THIS COURT HELD THAT A DEFENDANT IN A CAPITAL MURDER CASE HAS A CONSTITUTIONAL
15 RIGHT TO HAVE A JURY INSTRUCTED ON A LESSER INCLUDED OFFENSE IN CERTAIN INSTANCES.
16 THE BECK COURT, IN A FOOT NOTE, EXPRESSLY RESERVED JUDGMENT UPON
17 "WHETHER THE DUE PROCESS CLAUSE WOULD REQUIRE THE GIVING OF SUCH
18 INSTRUCTIONS IN A NON-CAPITAL CASE." Id. AT 638 FN. 7.

19 ABSTENTION DOCTRINES

20 THE ANTI-INJUNCTION ACT PROVIDES THAT A FEDERAL COURT MAY NOT GRANT
21 AN INJUNCTION TO STAY PROCEEDINGS IN A STATE COURT. ONE EXCEPTION STATES THAT
22 A FEDERAL COURT MAY ENJOIN STATE PROCEEDINGS IF CONGRESS HAS EXPRESSLY SO
23 PROVIDED. 28 USC § 1651(A) IS AN EXCEPTION.

24 THE UNITED STATES SUPREME COURT HAS HELD THAT CONGRESS PROVIDED
25 AN EXCEPTION UNDER 42 USC § 1983, UNDER WHICH PETITIONER, PLAINTIFF,
26 INDIGENT PRISONER, NOW SUES. MITCHUM V. FOSTER, 407 U.S. 225. 242-43, 92
27 S.Ct. 2151, 2162, 32 LEd 2d. 705 (1972); MIOFSKY V. SUPERIOR COURT 703
28 F.2d 332, 335 (9th Cir 1983) THUS THE PETITION AND RELIEF REQUESTED ARE

1 EXEMPTED FROM THE ANTI-INJUNCTION ACT.

2 IN *YOUNGER V. HARRIS*, 401 U.S. 37, 91 S.Ct. 746, 27 L.ED 2d 669 (1971), THE
3 SUPREME COURT HELD THAT FEDERAL COURTS SHOULD ABSTAIN FROM EXERCISING FEDERAL
4 JURISDICTION IF THE EXERCISE OF JURISDICTION WOULD INTERFERE WITH ONGOING STATE
5 COURT CRIMINAL PROCEEDINGS, ABSENT "EXTRA-ORDINARY CIRCUMSTANCES." Id at 53, 91
6 S.Ct. at 755. THE POLICY UNDERLYING YOUNGER ABSTENTION IS THAT STATE COURTS ARE
7 PERFECTLY CAPABLE OF EVALUATING INDIGENTS' FEDERAL CLAIMS. THE YOUNGER ABSTENTION
8 RULE REQUIRES FOUR ELEMENTS; 1. AN ONGOING STATE PROCEEDING, THAT 2. INDICATES
9 IMPORTANT STATE INTERESTS, AND 3. PROVIDES AN ADEQUATE OPPORTUNITY TO RAISE
10 FEDERAL CLAIMS, WHICH 4. THE FEDERAL COURT WOULD ENJOIN. "WHEN THE YOUNGER
11 ELEMENTS ARE PRESENT, THE FEDERAL COURT MAY EXERCISE ITS JURISDICTION ONLY WHEN
12 STATE COURT PROCEEDINGS ARE CONDUCTED IN GOOD FAITH AND AN EXTRA ORDINARY
13 CIRCUMSTANCE EXISTS." BATTERF, 332 F.3d at 617. BATTERF V. C.T. HORSE RACING 13d (9th Cir. 2003)

14 MANDAMUS IS A "DRASTIC AND EXTRA-ORDINARY REMEDY RESERVED FOR RARELY
15 EXTRA-ORDINARY CASES" *CHENEY V. UNITED STATES DISTRICT COURT*, 542 U.S. 367, 380 (2004) 124
16 S.Ct. 2576 159 L.ED. 2d. 459. "THE PARTY SEEKING MANDAMUS MUST SATISFY THREE
17 CONDITIONS: 1. NO OTHER REMEDY IS AVAILABLE, 2. THE RIGHT TO THE WRIT IS "CLEAR
18 AND indisputable" AND 3. THE ISSUING COURT IN ITS DISCRETION, DETERMINES THAT
19 A WRIT IS APPROPRIATE UNDER THE CIRCUMSTANCES." Id. at 380-381

20 "WHERE JURISDICTION OF COURT IS INVOKED ON GROUNDS WHICH, IF TRUE,
21 SPELL OUT EXISTENCE OF FEDERAL JURISDICTION, CASE MUST BE ENTERTAINED FOR
22 PURPOSES OF FULLY DETERMINING MERITS EITHER BY MOTION OR BY TRIAL."
23 *DRY CREEK LODGE, INC. V. UNITED STATES* (1975, CA10 WY) 515 F.2d 926, 20 FR
24 SERV 2d 940.

25 III. PRELIMINARY INJUNCTION STANDARD

26 THE PETITIONER CONTENDS THAT THE COMPLAINT, THIS PETITION, AND ALL OF THE FILINGS
27 IN THE DISTRICT COURT AND THE COURT OF APPEAL SHOWS THAT--"HE IS LIKELY TO SUCCEED
28 ON THE MERITS, THAT HE IS [CURRENTLY IN A TIMELY SENSE] SUFFERING INJURY [at the rapid

1 INCREASE OF AN HOURLY ACCRUAL RATE(AND) IRREPARABLE HARM [INJURY] IN THE ABSENCE OF
2 PRELIMINARY RELIEF [IN THE FORM OF WRIT OF HABEAS CORPUS W/ EXPEDITED TREATMENT T.R.O.], THAT
3 THE BALANCES OF EQUITIES TIPS IN HIS FAVOR, AND THAT AN INJUNCTION [IN THE FORM OF
4 WRIT OF MANDAMUS UPON THE CALIFORNIA SUPREME COURT] IS IN THE PUBLIC INTEREST."
5 WINTER V. NATURAL RES. DEF. COUNCIL ; 555, U.S. 7, 20, (2008)

6 THE INJUNCTION IS IN THE INTEREST OF THE PUBLIC BECAUSE THERE IS RENOWNED
7 DISCORD AMIDST THE CALIFORNIA'S LOWER COURTS. THE COURTS THEMSELVES HAVE PUBLISHED
8 THEIR OPINION IN PEOPLE V. MILLBROOK (2014) SUPRA, 222 CA. APP 4TH 1122 AND ACKNOWLEDGES
9 THE CALIFORNIA SUPREME COURT'S INACTION IN ADDRESSING THE "RENOWNED QUESTION"
10 "WHETHER TRIAL COURTS EVER HAVE A DUTY UNDER THE FEDERAL CONSTITUTION TO GIVE SUA
11 SPONTE A HEAT OF PASSION INSTRUCTION IN A NON-CAPITAL CASE IS UNRESOLVED"... AND
12 "WE TAKE A MOMENT TO CONSIDER THE FEDERAL CONSTITUTIONAL ISSUES BECAUSE THE CASE
13 AUTHORITY ON THIS IMPORTANT QUESTION IS INCONCLUSIVE AND BECAUSE, AS WE DISCUSS
14 BELOW, OUR SUPREME COURT IN THOMAS EXPLICITLY DIRECTED THE COURT OF APPEAL TO CONSIDER
15 THE FEDERAL CONSTITUTIONAL ISSUES. (SUPREME CT. MINS., PEOPLE V. THOMAS, AUG. 29, 2012, S203557, P. 1518)"
16 AND MILLBROOK'S FOOT NOTE 12 READS, "WE CAN NOT PERCEIVE HOW THE RESOLUTION OF
17 WHETHER THE FEDERAL CONSTITUTION IS IMPLICATED BECAUSE OF THE JURY'S INABILITY TO
18 DETERMINE EACH ELEMENT OF THE OFFENSE WOULD DEPEND ON WHETHER A HEAT OF PASSION
19 INSTRUCTION WAS REJECTED AFTER A REQUEST OR NOT GIVEN SUA SPONTE."

20 THESE ARE QUESTIONS OF STATE WIDE MAGNITUDE THAT EFFECTS THE GREATER
21 POPULATION OF THE PEOPLE OF THE STATE OF CALIFORNIA. THE QUESTIONS AND THE CONCERNS
22 WERE AUTHORED BY STATE JUDICIAL OFFICERS SEATED IN THE COURT OF APPEAL THAT
23 PROMPTED ANOTHER STATE JUDICIAL OFFICER SEATED IN THE SUPERIOR COURT TO GRANT
24 THE APPELLANT HABEAS RELIEF IN 2010 BASED UPON ITS FINDING OF NEW DEVELOPMENTS
25 OF CALIFORNIA CASE LAW THAT AFFECTS APPELLANTS ILLEGITIMATELY GAINED CONVICTION. THE
26 INACTION OF THE CALIFORNIA SUPREME COURT CAN BE TRACED BACK TO ALMOST

27 ① "RENOWNED QUESTION" WILL BE CITED THROUGH OUT THE PETITION REFERRING TO THE CALIFORNIA SUPREME
28 COURTS REPEATED REFUSALS TO GIVE CAL CRIM JURY INSTRUCTION 570 ITS PROPER STANDARD OF ANALYSIS
WHEN A TRIAL COURT FAILS TO SUA SPONTE INSTRUCT ON CAL CRIM 570 WHERE WARRANTED BY EVIDENCE
IN A NON CAPITAL CASE.

1 22 YEARS AGO WHERE HIS OWN JUSTICE KENNARD IN HER PUBLISHED DISSENT

2 "GIVEN THE MANNER IN WHICH CALIFORNIA HAS STRUCTURED THE RELATIONSHIP
3 BETWEEN MURDER AND VOLUNTARY MANSLAUGHTER, THE COMPLETE DEFINITION
4 OF MALICE IS THE INTENT TO KILL OR THE INTENT TO DO A DANGEROUS ACT WITH
5 CONSCIOUS DISREGARD OF ITS DANGER PLUS THE ABSENCE OF BOTH HEAT
6 OF PASSION AND UNREASONABLE SELF DEFENSE. WHERE THERE IS SUFFICIENT
7 EVIDENCE OF HEAT OF PASSION TO SUPPORT A VOLUNTARY MANSLAUGHTER
8 VERDICT, MURDER INSTRUCTIONS THAT FAIL TO INFORM THE JURY IT MAY
9 NOT FIND THE DEFENDANT GUILTY OF MURDER IF HEAT OF PASSION IS
10 PRESENT ARE INCOMPLETE INSTRUCTIONS ON THE ELEMENT OF MALICE.
11 BROOKERMAN (1996) SUPRA, 19 CAL. 4TH @ PP 189-190 (DIS. OP. OF KENNARD, J.) SUCH
12 A FAILURE TO INSTRUCT, I CONCLUDED, IS "FEDERAL CONSTITUTIONAL ERROR"
13 ID. AT P. 194 (DIS. OP. OF KENNARD, J.), BECAUSE IT GIVES THE JURY AN
14 INCOMPLETE DEFINITION OF MALICE, WHICH IS AN ELEMENT OF
15 THE CHARGED CRIME OF MURDER." PEOPLE V. MOYE (2009) 47, 52 4M
16 537, 563-564.

17 THE PUBLIC INTEREST IS EXPOSED BY THE PROCEDURAL IRREGULARITIES IN THE
18 HISTORY OF THE PETITIONER'S HARBES CASE AND IDENTIFIED IN HIS COMPLAINT. THE INACTION
19 OF THE CALIFORNIA SUPREME COURT MANFULLY ENABLED THE STATES APPPEL TO REVERSE HIS
20 GRANTED WRIT. WHICH HAS BECOME THE CAUSE OF PETITIONER'S UNLAWFUL CUSTODY.

21 THE QUESTIONS PRESENTED IN THIS PETITION FOR WRIT OF HABEAS CORPUS ARE
22 RIFE FOR CONSIDERATION BY THE CALIFORNIA SUPREME COURT. THE PETITIONER'S IMMEDIATE
23 RELEASE FROM THE STATES CUSTODY IS OUTWEIGHING IN HIS FAVOR AS THE "BALANCES"
24 TIPS IN HIS LAP WITH EQUITIES... LONG TIME OVERLOOKED AND IGNORED BY THE
25 STATE OF CALIFORNIA. PLEASE SEE ATTACHED §2254(B) PETITION FILED CORAM JUDGE

26 THE DUE PROCESS REQUIREMENT

27 TO SATISFY THE DUE PROCESS REQUIREMENT UNDER THE FOURTEENTH
28 AMENDMENT. THE CALIFORNIA SUPREME COURT'S HOLDING IN BROOKERMAN'S MAJORITY

1 DECISION (1998) AND MOYE (2009), SUPRA, 47 CAL 4TH AT P 558 FN.5 [DECLINING TO DECIDE
2 THE ISSUE BECAUSE THE DEFENDANT HAD NOT PROPERLY PRESERVED THE CLAIM OF FEDERAL
3 CONSTITUTIONAL ERROR]. (A PREREQUISITE THAT THE PETITIONER TODAY HAS PRESENTED BEFORE
4 THE CALIFORNIA SUPREME COURT TWICE, IN 2017 WITH AN UNPRECEDENTED REVERSED
5 GRANTED WRIT OF LIBERTY, AND AGAIN IN 2018 AND CALIFORNIA STILL REFUSES TO
6 ADDRESS THE DISCORD IN ITS LOWER COURTS). MUST "COMPORT WITH THE DEEPEST NOTION
7 OF WHAT IS FAIR AND RIGHT AND JUST." SOLESBEE V. BARKCOM, 339 U.S. 9, 16, 70 S. CT
8 457, 460, 94 L. ED. 604 (1950) "IN ADDITION IT DEMANDS THAT A LAW SHALL NOT BE
9 UNREASONABLE ARBITRARY OR CAPRICIOUS, AND THAT THE MEANS SELECTED SHALL
10 HAVE A REASONABLE AND SUBSTANTIAL RELATIONSHIP TO THE OBJECT BEING
11 SAUGHT. UNLIKE EQUAL PROTECTION, WHICH CONSIDERS A COMPARISON OF DIFFERENT
12 TREATMENTS, DUE PROCESS CONSIDERS WHETHER TREATMENT OF AN INDIVIDUAL
13 OR GROUP IS FUNDAMENTALLY FAIR, WITHOUT COMPARING SUCH TREATMENT TO THE
14 TREATMENT OF OTHERS" RILEY V. NEVADA SUPREME COURT, 763 F. SUPP. 446
15 (D. NEV. 1991)

16 CALIFORNIA'S APPLICATION OF HOLDING THE PETITIONER TO THE STATES STANDARD
17 OF HARMLESS ERROR ANALYSIS WHEN ASSESSING THE PREJUDICE ACCRUED TO HIM OVER
18 THE CENTRAL SUBMISSION OF HIS CLAIM THAT THE TRIAL COURT FAILED TO OVA-SPONTE
19 INSTRUCT ON THE LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER UNDER THE
20 THEORY OF PASSION OR PROVOCATION AS IT RELATES TO AN ELEMENT OF THE OFFENSE
21 CHARGED, WHILE GRANTING REVIEW OF THOMAS, SUPRA 218 CAL APP 4 REMANDING HIS
22 CONTENTION THAT A "REFUSAL TO INSTRUCT ON PROVOCATION WAS FEDERAL ERROR"
23 THAT INHIBITED THE GROUND BREAKING DEVELOPMENTS OF CALIFORNIA JURISPRUDENCE
24 AND ACTIVATED THE CONCLUSION OF PEOPLE V. MILLBROOK (2014)'S DETERMINATION
25 THAT SUCH AN ERROR IS SUBJECT TO REVERSAL EVEN UNDER THE LESS STRINGENT
26 STATES STANDARD OF HARMLESS ERROR PEOPLE V. WATSON (1956) [6 CAL 2D 818, 856]
27 ITSELF CAN ONLY PORTRAY TO THIS COURT WITH CLARITY THAT CALIFORNIA HAS
28 RETAINED ITS POWER TO ABUSE ITS DISCRETION AND ARBITRARILY CONSTRAINE ITS OWN

1 CAPRICIOUS INTERPRETATIONS OF GAUGING PREJUDICE ACCORD TO DEFENDANTS WHEN
2 THE STATE, BOTH PROSECUTION AND JUDGE SEEK TO CONVICT BY "LESSENING THE
3 BURDEN OF PROOF" IN FAVOR OF THE PROSECUTION AND "DISTORTING THE VERDICTS
4 FOR THE STATE" TO GAIN THEIR ILLICIT CONVICTIONS.

5 IX. EXCEPTIONAL CIRCUMSTANCES WARRANT

6 THE EXERCISE OF THIS COURT'S DISCRETIONARY POWERS

7 A VIVID PORTRAYAL OF CALIFORNIA'S STATE OF CONFUSION IS EXPRESSED ON
8 PAGES 8 TO 13 OF THIS PETITION THAT SHOWS PETITIONER'S EXHAUSTIVE EFFORTS TO OBTAIN
9 RELIEF FROM EVERY OTHER COURT. ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY
10 OTHER FORM BUT BY S. Ct RULE 20'S WRITS BOTH MANDAMUS AND HABEAS CORPUS.

11 THE CALIFORNIA SUPREME COURT'S 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 PETITIONER'S 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. 927] "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 COURT'S OWN JUSTICE KENNARD

1 IN PEOPLE V BREVERMAN (1998) SUPRA, 19 (AT 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 (AT 4TH @ P P. 18990 (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
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 THIS
19 COURT. (BREVERMAN, SUPRA, 19 (AT 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 MCLANEY V. WILBURE (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 OR 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 PETITIONER HAMPTON HAS PROPERLY PRESERVED THE CLAIMS FROM HIS HABEAS
4 COURTS INITIAL GRANT OF HIS WRIT OF HABEAS CORPUS BASED UPON THE COURTS 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 STATES 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 US 18 BECAUSE WE CONCLUDE THAT THE ERROR
12 WAS PREJUDICIAL EVEN UNDER THE LESS STRINGENT WATSON STANDARD." PEOPLE V
13 MILLBROOK (2014) 222 CAL APP 4TH 122. THE MILLBROOK COURT FACED DIFFICULTY BECAUSE
14 OF THE SUPREME COURTS LACK OF CASE AUTHORITY ON THIS IMPORTANT ISSUE.

15 III. THE CALIFORNIA SUPREME COURTS 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 COURTS RULING IN BECK V. ALABAMA (1980) 447 US 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 FN AND THEIR HOLDING
22 IN MULLANEY V. WYOMING (1975) 421 US 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. 148, 49, 115 THE CALIFORNIA
26 SUPREME COURT "APPLIED THE WATSON STANDARD TO ASSESS THE TRIAL COURTS 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 CAPITAL CASES" (id. at p. 165
6 - 66 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 CAPITAL
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 CAPITAL 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. 169)
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 WITNESSED
26 BY THE EVIDENCE IN A NON-CAPITAL CASE SHOULD BE DISTINGUISHED
27 BY UNITED STATES V. GIBUDIN 515 U.S. 506, 510, 512, 514, 520 (1995)
28 CONTRARY TO THE CALIFORNIA SUPREME COURTS MATURITY

Holding in BREWER v. UNITED STATES (1980) 447 U.S. 625 [65 LEd 892, 100 S.Ct. 2382] WHICH COVERS A BROAD SCOPE OF LESSER INCLUDED OFFENSES IN CAPITAL CASES, NOT THE PARTICULAR INSTRUCTION THAT IMPLICATES THE PROSECUTION'S BURDEN OF PROOF. UPON THE ELEMENT OF THE OFFENSE CHARGED, WHICH IS CATEGORICALLY DIFFERENT FROM A FAILURE TO INSTRUCT ON ALTERNATIVE THEORIES UNITED STATES v. GANDIN 615 U.S.

X. STATUTES RELEVANT TO FACTUAL DETERMINATIONS BY THIS COURT

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

FEDERAL RULES OF EVIDENCE 201 (b) ALLOWS THIS COURT TO "JUDICIALLY NOTICE A FACT THAT IS NOT SUBJECT TO REASONABLE DOUBT BECAUSE IT: (1) IS REASONABLY KNOWN WITHIN THE TRIAL COURT'S TERRITORIAL JURISDICTION OR (2) CAN BE ACCURATELY AND READILY DETERMINED FROM SOURCES WHOS ACCURACY CAN NOT REASONABLY BE QUESTIONED" APPLICATION CONTAINS NO FACTUAL DISPUTE (SEE EX G.3, P5-9)

XI

STATEMENT OF THE CASE

FACTS MATERIAL TO THE QUESTIONS

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

SPECIFICALLY HAMPTON CLAIMED HE WAS DENIED A FAIR TRIAL IN VIOLATION OF HIS RIGHTS TO COUNSEL AND TO DUE PROCESS OF LAW ARISING FROM THE ABSENCE OF AN INSTRUCTION ALONG THE LINES OF CAL CRIM 570 THAT WOULD HAVE ADVISED THE JURY THAT MALICE IS NEGATED IF THE DEFENDANT 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 CONTENDS 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 PRESENTED THE ASSERTION THAT FEDERAL CONSTITUTIONAL
24 LAW REQUIRES ADEQUATE INSTRUCTION ON THE ELEMENT OF THE OFFENSE (HERE,
25 MALICE.) (CT 114-116) (EX B)

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) 396 U.S.
2 IS 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 161) 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,
25 396 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 186) 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 CAUSE OR REQUEST FOR SUPPLEMENTAL BRIEFING." (CT 186.)

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 187, 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 CALIFIM 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. 189), 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.E. (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:

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 HABERS COURT DID NOT EXPLICITLY MAKE A FINDING OF
6 PREJUDICE UNDER THE STATE STANDARD WATSON, IT SUGGESTED THAT THE
7 ERROR MET THAT STANDARD AS WELL WHEN IT CITED PEOPLE V. MILLBROOK
8 (2014) 22 CAL APP 4TH 1122 AND QUOTED ITS HOLDING THAT SIMILAR "ERROR
9 WAS PREJUDICIAL EVEN UNDER THE WATSON STANDARD WHERE [THE] VICTIM
10 WAS DELIBERATE AND THREATENING AND THE DEFENDANT SHOT IN THE MIDDLE OF
11 THEIR ARGUMENT." (CT 192)

12 ~~XII~~ 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 DEFENDANT'S CURRENT
15 HABERS PETITION IS PROCEDURALLY BARRED AS A SUCCESSIVE PETITION. AND THE PEOPLE
16 CONTEND THAT, EVEN IF DEFENDANT'S HABERS 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 DEFENDANT'S HABERS 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 HABERS COURT, DESPITE ITS
28 MULTIPLE OPPORTUNITIES TO DO SO. NOR HAS IT OFFERED ANY BASIS FOR THIS

1 COURT TO OVERLOOK THAT FAIRNESS 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 SANDBAGGING 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 16)

22 AS TO THE MERITS, HAMPTON NOTES:

23 "THE STATE'S CLAIM FOR REVERSIBLE ERROR ON THE MERITS REELS ON A
24 NARROW ARGUMENT: THAT THERE WAS 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 NEGATE 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 ALLEGED
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 416
17 IN RE HAMPTON, SUPRA 9T 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 GRANTINGLY 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 FORFEITED CLAIM REQUIRED REMAND TO THE
2 TRIAL COURT FOR FACTUAL DEVELOPMENT - CITING ABSOLUTELY NO LAW TO
3 SUPPORT ITS ACTION. (TYP. OPN. 13) FOR NONE EXISTS.

4 IN THE CALIFORNIA COURT OF APPEALS OPINION (EX 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 EXPAINED 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. BARNETT] (1998) 19 CAL. 4TH 142." THOMAS AT P. 644

11 ALTHOUGH MILLBROOK, SUPRA, 222 CAL. APP. 4TH AT D. 1146 ANOTHER CASE THE OPINION
12 UTILIZED SPECIFICALLY ADDRESSES 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 [4.] 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 PROCEEDURALLY BARRED AT WHOLE 8/10/18. IT ALSO DENIED HIS MOTION
27 FOR RECONSIDERATION 7/25/18. PETITIONER RAISED THE SAME ISSUE
28 OF A TRIAL COURT'S 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 RIPENED QUESTION BEFORE THEM IN HAMPTON.

7 ARGUMENT

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

9 THERE EXISTS A PIETRA 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 CIRCUMSTANCE
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. (PG 12. EXP) 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 EXF) ignoring the Application of the element of the offense.

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 COURT 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 PETITIONER'S 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 REMENDS 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 BRENNERMAN
18 DOES NOT COVER THE PRECISE ISSUES RAISED IN THIS CASE." (Pg. 8 LINE 7 EX. G)

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
22 TO PETITIONER'S CENTRAL SUBMISSION OF THE TRIAL COURT'S FAILURE TO SUA SPONTE
23 INSTRUCT. 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 28 USCS § 1331 FEDERAL QUESTION JURISDICTION

27 CALIFORNIA HAS EXPRESSLY LEFT THIS FEDERAL QUESTION OPEN AWAITING A
28 CASE THAT PROPERLY PRESERVED THE QUESTION WHETHER THE ERROR IMPLICATES THE

1 FEDERAL CONSTITUTION. HAMPTON HAS PROPERLY RAISED THIS FEDERAL QUESTION THROUGHOUT ALL
2 THREE STATE COURTS TWICE IN ONE YEAR. (CALIFORNIA SUPREME COURT #S244905 12/15/17 [STATES
3 APPEND] AND #S250833 10/31/18)

4 HAMPTON ARGUES THAT THE U.S.D.C. CAN ENJOIN THE CALIFORNIA SUPREME COURT
5 TO ASSUME JURISDICTION OF THE FEDERAL QUESTIONS PRESENTED AND IMPLEMENT CALIFORNIA'S
6 CASE AUTHORITY THAT WOULD SETTLE ITS LOWER COURTS STATE OF CONFUSION AND HAMPTON'S
7 ANTICIPATED REPOSE.

8 RELIEF SAUGHT NOT AVAILABLE IN ANY OTHER COURT

9 "DISTRICT COURTS DO NOT HAVE JURISDICTION OVER DIRECT CHALLENGES TO FINAL DECISIONS
10 OF STATE COURT, EVEN IF THOSE CHALLENGES ALLEGE THAT STATE COURTS ACTION WAS
11 UNCONSTITUTIONAL; PROPER COURT IN WHICH TO OBTAIN DIRECT REVIEW OF STATE COURT
12 DETERMINATIONS IS SUPREME COURT." HAMPTON V. COUNTY OF SAN FRANCISCO (2010,
13 CA 9 CAL) 627 F.3d 1273, 111 BNA FPCAS 46, 78 FR SERV 3d 34.

14 ARGUMENT

15 CALIFORNIA'S RELIANCE IN BREWERMAN (1998) CHING THIS COURTS HOLDING IN BECK
16 CONFLICTS WITH THIS COURTS HOLDINGS IN UNITED STATES V. GARDIN AND REPRESENTS A
17 DEPARTURE FROM THE ACCEPTED AND USUAL COURSES OF JUDICIAL PROCEEDINGS AS TO
18 SANCTION SUCH AN UNPRECEDENTED COURT ACTION IN ABUSING ITS DISCRETION
19 BY REVERSING PETITIONERS GRANTED WRIT OF HABEAS CORPUS THAT WAS BASED UPON
20 A TRIAL COURTS FAILURE TO SUSPENSE INSTRUCT UPON AN INSTRUCTION ON PASSION
21 AS IT RELATES TO THE STATES BURDEN TO PROVE AN ELEMENT OF THE OFFENSE
22 CHARGED; IN A NON CAPITAL CASE.

23 CALIFORNIA'S MAJORITY IN BREWERMAN, CUNNINGLY AUTHORIZED ITS CAPRICIOUSLY
24 MOTIVATED RELIANCE UPON BECK THAT UNLAWFULLY PROVIDES CALIFORNIA WITH THE
25 ABILITY TO ARBITRARILY ADMINISTER RULINGS WHEN DETERMINING WHICH
26 STANDARD OF ANALYSIS FOR GIVING PREJUDICE THAT CALIFORNIA REVIEWING COURTS
27 SHOULD USE WHEN THEY FACE THE CLAIM PETITIONER PRESENTS TODAY. AS THIS
28 REVERED COURT HAS HELD STRUCTURAL ERRORS TO BE AUTOMATICALLY REVERSIBLE.

THERE EXISTS AN INTRA-CIRCUIT SPLIT OF DECISIONS CONCERNING
WHETHER OR NOT TO EXTEND BECK'S RULING TO NONCAPITAL CASES.

CALIFORNIA RELIED UPON BECK'S HOLDING TO ESTABLISH BREVERMAN. THIS COURT RESERVED JUDGMENT UPON WHETHER "THE DUE PROCESS WOULD REQUIRE THE GIVING OF [LESSER INCLUDED OFFENSE] INSTRUCTIONS IN A NON CAPITAL CASE. BECK, AT 638 FN.7. THIS COURT CAN ADDRESS THE DISCORD AMIDST THE CIRCUITS AND PROMOTE UNIFORMITY OF DECISION BY ADDRESSING HABEAS INTERESTS IN HIS CLAIMS THAT CERTAIN INSTRUCTIONS INHERENTLY CARRY PRESUMPTIVE QUALITIES THAT IMPACT A DEFENDANT'S FEDERAL RIGHTS TO DUE PROCESS WHEN TRIAL COURTS FAIL TO SUA SPONTE INSTRUCT UPON LESSER INCLUDED OFFENSE INSTRUCTIONS THAT IMPLICATE THE PROSECUTION'S BURDEN OF PROOF ON BOTH, AN ELEMENT OF THE OFFENSE CHARGED AND THE DEFENSE THEORY OF THE CASE. SUCH A RULING WOULD PUT A CHECK CALIFORNIA'S PERPETUATED POWER TO RENDER "DIRECTED VERDICTS FOR THE STATE" TO CONVICT." SEE SOLIS V. GARCIA (9TH CIR. 2000) 219 F.3d 922, 928-929 WHERE A LIST OF CIRCUIT COURTS SPLIT DECISIONS ON EXTENDING BECK TO NONCAPITAL

LEGAL RIGHTS AT ISSUE ARE CLEAR AND EXIGENT CIRCUMSTANCES EXIST

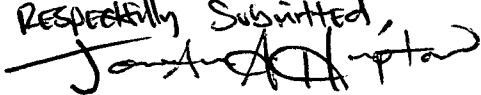
CALIFORNIA HAS SHOWN TO BE ADAMANT IN ITS RENOVANCE TO ADDRESS THIS ANTICIPATED QUESTION ON THE PROPER STANDARD FOR ANALYSIS WHEN ASSESSING PREJUDICE ON THIS PASSION OFFENSE'S INSTRUCTION RELATING TO MALICE. PEOPLE V. BREVERMAN [(1998) 19 CAL. 4TH 142]; PEOPLE V. MOYE (2009) 47 CAL. 4TH 537, 564-565, 556 FN.5; PEOPLE V. THOMAS (2013) 218 CAL. APP. 4TH 629, 654; PEOPLE V. MILLBROOK (2014) 222 CAL. 4TH 1122; IN RE JONATHAN HAMPTON ON HABEAS CORPUS, CAL APP 3RD # C081634, CA. S. CT. # S244905; (STATES APPEAL); IN RE JONATHAN HAMPTON ON HABEAS CORPUS, CAL APP 3RD # C087151, CA. S. CT. # S250823 - (ONGOING STATE PROCEEDINGS)

THE PETITIONER HAS STANDING BEFORE THIS COURT TO ENJOIN CALIFORNIA TO ADDRESS THE PROPER STANDARD FOR ANALYSIS WHEN A TRIAL COURT FAILS TO SUA SPONTE INSTRUCT UPON CERTAIN CALIFORNIA CRIMINAL INSTRUCTIONS THAT INHERENTLY BEAR A UNIQUE PRESUMPTIVE QUALITY THAT INVOKES THE PETITIONER'S 5TH, 6TH, AND 14TH AMENDMENT RIGHTS TO HAVE THE TRIAL COURT SUA SPONTE INSTRUCT UPON

1 CAL CRIM 570 HEAT OF PASSION PROVOCATION VOLUNTARY MURDER - AND - THE
2 CATEGORICAL SELF-DEFENSE INSTRUCTION ALONG THE LINES OF CAL CRIM 505 BRACKETS
3 RESISTING THE COMMISSION OF A ROBBERY. CALIFORNIA MUST ALSO ADDRESS THIS COURT'S
4 REVERED HOLDINGS IN UNITED STATES V. SCOTT (1979) 437 U.S. 82 AND MARTIN LUTHER
5 SUPRA, 480 U.S. at 571, 97 S.Ct. at 1355 AS THESE HOLDING RELATES TO THE STATE'S
6 APPEAL AND REVERSAL OF PETITIONER'S GRANTED WRIT OF HABEAS CORPUS.

7 "FURTHER, EVEN IF JURISDICTION IS PROPERLY PLED, TO THE EXTENT THAT PLAINTIFF SEEKS A
8 WRIT OF MANDAMUS UNDER THE ALL WRITS ACT, SUCH RELIEF SHOULD BE GRANTED" ONLY IN THE
9 MOST CRITICAL AND EXIGENT CIRCUMSTANCES WHEN "THE LEGAL RIGHTS AT ISSUE ARE
10 INDISPUTABLY CLEAR" BROWN V. GILMORE, 533 U.S. 1301, 1302, 122 S.Ct. 1150 LEd 2d 782
11 (2001). MANDAMUS IS A "DRASTIC AND EXTRA-ORDINARY REMEDY RESERVED FOR REALLY
12 EXTRA ORDINARY CASES" CHENEY V. UNITED STATES DISTRICT COURT, 542 U.S. 367, 380 (2004)
13 124 S.Ct. 2576 159 LEd 2d 459. THE PARTY SEEKING MANDAMUS MUST SATISFY THREE
14 CONDITIONS: 1) NO OTHER ADEQUATE REMEDY IS AVAILABLE; 2) THE RIGHT TO THE WRIT IS
15 "CLEAR AND INDISPUTABLE;" AND 3) THE ISSUING COURT, IN ITS DISCRETION, DETERMINES
16 THAT A WRIT IS APPROPRIATE UNDER THE CIRCUMSTANCES." Id @ 380-81

17
18 I, JONATHAN HAMPTON, HAVE READ THIS PETITION AND HEREBY VERIFY THAT ALL
19 MATTERS ALLEGED AND PRESENTED THEREIN ARE TRUE, SO STATED, I CERTIFY UNDER
20 PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED AT
21 CENTINELA STATE PRISON IN IMPERIAL COUNTY IN THE STATE OF CALIFORNIA, ON
22 MARCH 12, 2020.

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Respectfully Submitted,


DATED: MARCH 12, 2020

IN PROPRIA PERSONA