

APPENDICES

- A. Order of the District Court, denying Petition for Writ of Habeas Corpus.
- B. Memorandum Decision of the Ninth Circuit Court of Appeals panel, affirming denial of the Petition.
- C. Order of the Ninth Circuit panel, denying rehearing and rehearing *en banc*
- D. Letter to Chief Judge Sidney Thomas, *En Banc* Review Coordinator
- E. Order finding that letter is improper and issues are without merit.
- F. Ninth Circuit Docket ("Dkt")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL WOOTEN,

Petitioner,

v.

WARREN L. MONTGOMERY,

Respondent.

Case No. 16-cv-03755-VC

**AMENDED ORDER DENYING
PETITION FOR WRIT OF
HABEAS CORPUS**

Re: Dkt. Nos. 1, 33

After the Court issued an order denying Wooten's petition for a writ of habeas corpus, Wooten filed a motion for reconsideration, which was granted. *See* Dkt. No. 43. Having reconsidered the matter, the Court continues to believe that, although it's a close question, habeas relief should be denied. Although Wooten's Fourth Amendment right to a prompt probable cause hearing was clearly violated, there is reason to doubt whether a California court would have applied the exclusionary rule to Wooten's later confession. That prevents Wooten from meeting the "doubly deferential" standard applied to *Strickland* claims subject to AEDPA. *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009). Nor do Wooten's remaining arguments justify habeas relief. This ruling supersedes the ruling that was previously issued. *See* Dkt. No. 31.

I

A *Strickland* theory premised on counsel's failure to file a motion to exclude evidence requires: (1) that the motion would have been likely to succeed; and (2) that it be reasonable to expect a more favorable trial outcome for the defendant as a result. *See Kimmelman v. Morrison*, 477 U.S. 365, 375, 382 (1986); *Leavitt v. Arave*, 646 F.3d 605, 613 (9th Cir. 2011); *Wilson v. Henry*, 185 F.3d 986, 990 (9th Cir. 1999). The standard AEDPA gloss on this analysis requires

that the *Strickland* violation be so obvious from the state-court record that no reasonable jurist could disagree as to the merit of the claim. *See 28 U.S.C. § 2254(d); Harrington v. Richter*, 562 U.S. 86, 101-03 (2011); *Nasby v. McDaniel*, 853 F.3d 1049, 1052-53 (9th Cir. 2017); *see also Premo v. Moore*, 562 U.S. 115, 123-24 (2011).

After Wooten's warrantless arrest under California Penal Code section 12034(a),¹ he was entitled to a probable cause hearing without unreasonable delay. *County of Riverside v. McLaughlin*, 500 U.S. 44, 55-57 (1991); *People v. Jenkins*, 122 Cal. App. 4th 1160, 1174-76 (2004). The government has a certain degree of flexibility in meeting that standard. *McLaughlin*, 500 U.S. at 53-54. But when a probable cause hearing is delayed solely for the purpose of seeking additional evidence about an unrelated crime, the government's delay is unreasonable, and a Fourth Amendment violation has occurred. *See Jenkins*, 122 Cal. App. 4th at 1171, 1175-76; *see also McLaughlin*, 500 U.S. at 56. That's what happened here. Wooten was arrested for one crime, approved for transfer for the express purpose of interrogation on another, and not given a probable cause hearing before transfer. *See Petition Ex. O* (Dkt. No. 1-3). Wooten clearly suffered a Fourth Amendment violation. *See Jenkins*, 122 Cal. App. 4th at 1175-76.

If reasonable jurists would agree that a motion to suppress based on the *McLaughlin* violation were likely to succeed, that would be the end of the matter. Succeeding on a motion to suppress, and eliminating Wooten's in-custody confession, would have dramatically helped Wooten's odds at trial. Without the prior confession, Wooten would never have felt compelled to take the stand to reiterate his acts as part of an argument for self-defense. *Cf. Nguyen v. McGrath*, 323 F. Supp. 2d 1007, 1024 (N.D. Cal. 2004). Even under the "doubly deferential" standard applied here, the habeas petition would be granted.

Although a motion to suppress very well might have been granted, this Court cannot say that any reasonable jurist would conclude that the motion to suppress would have been likely to

¹ Currently codified at California Penal Code section 26100.

succeed. *See Premo*, 562 U.S. at 124. A reasonable jurist might have concluded there was probable cause to arrest Wooten for murder as of September 23, 2008, on the basis of Toussaint's statements, or after Wooten and Toussaint were arrested together several months later.² The existence of probable cause as to the murder would have distinguished this case from *People v. Jenkins*, which held that suppression was appropriate under otherwise similar circumstances. *See* 122 Cal. App. 4th at 1174-78. And the existence of probable cause could have led a reasonable jurist to conclude that the Fourth Amendment violation and Wooten's subsequent confession were sufficiently disconnected that suppression was not warranted. For instance, the state court might have determined, under a broad reading of *New York v. Harris*, 495 U.S. 14 (1990), that Wooten's custody at the time he confessed was lawful, notwithstanding the Fourth Amendment violation, because there was probable cause to arrest him for the murder, and that his confession therefore was not the "fruit" of the violation. *See id.* at 18-20; *see also Powell v. Nevada*, 511 U.S. 79, 85 n* (1994) (declining to determine whether the approach taken in *New York v. Harris* should apply in the context of a *McLaughlin* violation); *id.* at 89-92 (Thomas, J., dissenting); *United States v. Crawford*, 372 F.3d 1048, 1055-56 (9th Cir. 2004) (en banc). Alternatively, the state court could have concluded that, even if the confession could be considered the product of the *McLaughlin* violation, the existence of probable cause as to the murder (perhaps coupled with the *Miranda* warning Wooten received) attenuated the otherwise seemingly close connection between the constitutional violation and the confession. *See Anderson v. Calderon*, 232 F.3d 1053, 1070-72 (9th Cir. 2000), *overruled on other grounds*, *Bittaker v. Woodford*, 331

² Petition Exs. H (Dkt. No. 1-2), N (Dkt. No. 1-3) at ll. 2775-2904, 3022-3241, 4036-4123, 4158-66, 4988-95, 5019-23, 5050-5900. The police evidently weren't confident that Toussaint's statements provided probable cause for an arrest at the time they were made in September 2008 – perhaps because there was reason to doubt the reliability of his statements. *Cf. Lilly v. Virginia*, 527 U.S. 116, 131 (1999); *United States v. Patayan Soriano*, 361 F.3d 494, 505-06 (9th Cir. 2004); *People v. Campa*, 36 Cal. 3d 870, 882 (1984). And the police certainly didn't arrest Wooten on the basis of these statements, or seek a warrant to do so. Wooten sought to introduce evidence that was never presented to the state court – evidence this Court therefore may not consider – to shed additional light on the officers' apparent uncertainty. *See* Dkt. No. 28; *Cullen v. Pinholster*, 563 U.S. 170, 181-82 (2011). But the officers' subjective beliefs do not determine whether probable cause existed, and a reasonable jurist could conclude that probable cause existed on the record here. *See Brigham City v. Stuart*, 547 U.S. 398, 404 (2006).

F.3d 715, 728 (9th Cir. 2003) (en banc); *People v. Boyer*, 38 Cal. 4th 412, 448 (2006); *cf. Utah v. Strieff*, 136 S. Ct. 2056, 2062 (2016). Had the state court regarded the record and the law this way, there would be no grounds to conclude that Wooten's counsel was ineffective for failing to file a motion to suppress rooted in the Fourth Amendment violation.

The possibilities outlined above are not necessarily the best interpretation of the facts or the law. But in the present context, what matters isn't this Court's view of the merits of the hypothetical suppression motion, or even of counsel's competence. Because reasonable jurists could conclude the suppression motion was unlikely to succeed, they also could debate the merits of Wooten's *Strickland* claim. Thus, even though Wooten's trial attorney would have had "everything to gain and nothing to lose" by bringing a motion to suppress on Fourth Amendment grounds, the AEDPA standard precludes habeas relief. *Lowry v. Lewis*, 21 F.3d 344, 346 (9th Cir. 1994) (quoting *United States v. Molina*, 934 F.2d 1440, 1447 (9th Cir. 1991)); *see also Kimmelman*, 477 U.S. at 382.

II

Wooten's remaining arguments are unsuccessful. The record offers adequate support for probable cause to arrest Wooten for the misdemeanor of knowingly allowing Toussaint to enter his car with a loaded gun in violation of former California Penal Code section 12034(a). A motion to suppress based on unlawful arrest was therefore highly unlikely to succeed at the trial court, and failure to make the motion is not a basis for a *Strickland* claim. To the extent Wooten's *Strickland* theory is premised on officers' failure to release him within the timeframe specified in California law, Wooten's theory is undermined by the California Constitution, which ensures that statements will "be excluded only if so required by the federal Constitution." *Jenkins*, 122 Cal. App. 4th at 1174 n.4 (citations omitted); *see also Virginia v. Moore*, 553 U.S. 164, 176 (2008).

There is no evident basis for believing that Wooten's counsel was denied access to exculpatory information, nor is there any basis for believing that information counsel failed to seek would have had an impact at trial. A reasonable jurist could therefore have concluded that

the *Brady* and *Strickland* arguments regarding Johnson and Toussaint are without merit.

Wooten has not made a colorable case that the prosecution knowingly relied on false evidence in describing "the green-shirted person" in the gas station surveillance video as Toussaint. The identity of the green-shirted person was contested at trial and remains contested now, but that dispute does not amount to a due process violation. *See United States v. Zuno-Arce*, 339 F.3d 886, 889-90 (9th Cir. 2003).

For the reasons stated in the decision affirming Wooten's conviction on direct appeal, a reasonable jurist could conclude that any error in jury instructions was harmless under either *Chapman* or *Brecht*, and that there was adequate evidence of premeditation. *People v. Wooten*, No. A133860, 2014 WL 897896, at *6-9 (Cal. Ct. App. Mar. 7, 2014).

III

A certificate of appealability is granted with respect to the issues discussed in Section I of this decision, but not with respect to the issues discussed in Section II. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

IT IS SO ORDERED.

Dated: August 15, 2018



VINCE CHHABRIA
United States District Judge

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 19 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MIGUEL ANTONIO WOOTEN,

No. 18-16657

Petitioner-Appellant,

D.C. No. 3:16-cv-03755-VC

v.

MEMORANDUM*

WARREN L. MONTGOMERY, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of California
Vince Chhabria, District Judge, Presiding

Submitted May 15, 2020**
San Francisco, California

Before: R. NELSON and BRESS, Circuit Judges, and BLOCK,*** District Judge.

Miguel Wooten appeals the district court's denial of his 28 U.S.C. § 2254 petition as well as the district court's refusal to expand the record. We have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

jurisdiction under 28 U.S.C. § 2253 and affirm.

We review de novo the district court’s denial of Wooten’s § 2254 petition. *Deck v. Jenkins*, 814 F.3d 954, 977 (9th Cir. 2016). The petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which bars relief unless the state court’s decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1). Where, as here, the claim was raised only in state habeas proceedings and then summarily denied, we must determine “what arguments or theories . . . could have supported[] the state court’s decision” and then decide “whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the Supreme] Court.” *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

1. Wooten contends that he received constitutionally ineffective assistance of counsel when his trial attorney failed to move to suppress Wooten’s confession to police that he shot William Johnson. To establish ineffective assistance of counsel, Wooten must demonstrate both deficient performance and prejudice under the familiar standard of *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under AEDPA, “[a] state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard itself,” because “[t]he pivotal question is whether the state court’s application of the

Strickland standard was unreasonable.” *Richter*, 562 U.S. at 101.

a. Wooten first argues that his trial counsel was ineffective for failing to move to suppress his confession as fruit of his illegal arrest for violating former California Penal Code § 12034 (2009). But the district court declined to issue a certificate of appealability on this issue, and Wooten did not comply with the requirements of Ninth Circuit Rule 22-1(e) in seeking to raise the uncertified issue on appeal. The issue is therefore not properly before us. *See* 28 U.S.C. § 2253(c).

Regardless, Wooten’s argument lacks merit and so we decline to issue a certificate of appealability. As relevant here, California law made it a misdemeanor for a driver “knowingly to permit any other person to carry into or bring into the vehicle a firearm” in certain public places. Cal. Penal Code §§ 12034(a) (2009) (since re-codified at Cal. Penal Code § 26100). Officers observed Wooten allow another individual, Jarvis Toussaint, into his car, and Wooten was entering the driver’s seat when officers observed a firearm on Toussaint’s side of the vehicle.

These observations established probable cause that Wooten committed a misdemeanor in the officers’ presence. A motion to suppress on the basis of an unlawful arrest was thus unlikely to succeed, and a state court could reasonably determine that Wooten’s counsel did not render deficient performance by failing to file a meritless motion. *Lowry v. Lewis*, 21 F.3d 344, 346 (9th Cir. 1994).

b. Wooten next challenges his attorney’s failure to move to suppress his

confession on the grounds that it was obtained after police unreasonably delayed Wooten’s probable cause determination. *See Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1992) (holding that the Fourth Amendment prohibits delaying a probable cause hearing “for the purpose of gathering additional evidence to justify the arrest”). Wooten argues that police obtained his confession by unlawfully delaying his probable cause hearing on the weapon charge in order to question him about a different crime (Johnson’s murder), so his confession would have been suppressed if his counsel had filed the appropriate motion.

Even assuming deficient performance, a state court could reasonably conclude that Wooten was not prejudiced by his counsel’s failure to file a motion under *McLaughlin*, because suppression was unlikely. In *Powell v. Nevada*, 511 U.S. 79 (1994), the Supreme Court left open whether suppression is an appropriate remedy for a *McLaughlin* violation. *See id.* at 85 n.*. And the Supreme Court has held that under AEDPA, “[i]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by [the Supreme] Court.” *Richter*, 562 U.S. at 101 (quotations omitted).

Wooten’s reliance on *People v. Jenkins*, 19 Cal. Rptr. 3d 386 (Ct. App. 2004), does not demonstrate prejudice under AEDPA. Even assuming this state case is relevant to our analysis under AEDPA, *Jenkins* suppressed inculpatory statements after the defendant was arrested for one crime but questioned “about another crime

for which there was no probable cause to arrest him.” *Id.* at 394.

Here, we agree with the district court that a reasonable jurist could conclude there was probable cause to arrest Wooten for murder based on Toussaint informing police that Wooten shot Johnson, where Toussaint’s account was corroborated by the fact that he and Wooten were later arrested for unlawfully carrying a firearm while traveling together in the same car. Because a reasonable jurist could determine there was probable cause to arrest Wooten for Johnson’s murder, a reasonable jurist could distinguish this case from *Jenkins* and conclude suppression was unwarranted.

A reasonable jurist could also find suppression unwarranted under *Jenkins* because *Jenkins* held suppression is required only when the statement “was not sufficiently an act of free will to purge the primary taint of the unlawful invasion.” 19 Cal. Rptr. 3d at 400 (quotations omitted). Especially with the AEDPA overlay, a reasonable jurist could conclude that Wooten’s confession was sufficiently voluntary under *Jenkins*. Among other things, Wooten was properly *Mirandized* and chose to speak with police without a lawyer. Sgt. Jones also sought and obtained a court order removing him from jail to an interview room before questioning him. Taking these and other factors in the record together, suppression was not beyond fair-minded disagreement. *Richter*, 562 U.S. at 102.

2. Lastly, Wooten argues that the district court improperly denied his request to expand the record to include a description of Johnson’s killer given by

Antione Knox, a witness to the shooting. We review the district court's refusal to expand the record for abuse of discretion. *Djerf v. Ryan*, 931 F.3d 870, 884 (9th Cir. 2019).

Wooten's request is foreclosed by *Cullen v. Pinholster*, 563 U.S. 170 (2011), which held that "review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." *Id.* at 181. Wooten's underlying claim is reviewed under § 2254(d)(1) and the information Wooten seeks to introduce was not before the state courts. Regardless, and particularly under AEDPA, Wooten has not demonstrated that Knox's description would have defeated probable cause and thereby supported his *Strickland* claim.

We have carefully reviewed Wooten's remaining arguments and conclude they are without merit.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 24 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MIGUEL ANTONIO WOOTEN,

Petitioner-Appellant,

v.

WARREN L. MONTGOMERY, Warden,

Respondent-Appellee.

No. 18-16657

D.C. No. 3:16-cv-03755-VC
Northern District of California,
San Francisco

ORDER

Before: R. NELSON and BRESS, Circuit Judges, and BLOCK,* District Judge.

The panel has unanimously voted to deny Appellant's petition for panel rehearing. Judge R. Nelson and Judge Bress have voted to deny the petition for rehearing en banc, and Judge Block so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc (Docket Entry No. 65) is **DENIED**.

* The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

APPENDIX C

**RICHARD SUCH
ATTORNEY AT LAW**

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June 25, 2020

Hon. Sidney R. Thomas
Chief Judge and En Banc Coordinator
U.S. Court of Appeals for the Ninth Circuit
c/o Molly Dwyer, Clerk of Court
Office of the Clerk
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Miguel WOOTEN v. Warren MONTGOMERY, No. 18-16657

Dear Judge Thomas:

I am writing to ask you and your staff to look into what appear to be irregularities in the decision in the above matter.

The Attorney General's Answering Brief (Dkt# 37) was electronically submitted for review on December 12, 2019, and was filed on December 16, 2019. At the same time, the Attorney General was ordered to file 6 copies of that brief in paper format (Dkt#39).

Believing that the 21 days for filing the Appellant's Reply Brief began to run on the 16th, I submitted a streamlined request for an extension of time on January 5, 2020, which was denied on January 6 on the ground that it should have been filed by January 3. So on January 6, I filed a formal motion for an extension of time until February 5, 2020 (Dkt# 44), which was granted on January 7.

Since the Reply Brief had not yet been filed, I was surprised to receive on January 17, a notice that "This case is being considered for an upcoming oral argument in San Francisco ... for May 2020 and the 2 subsequent sitting months in that location." That notice stated "you will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date." (Dkt# 46)

On January 29, 2020, I filed a second motion for an extension of time to file the Reply Brief until March 6 (Dkt# 47), which was granted on February 4. Again, I was surprised to receive on March 1, 2020, a notice of oral argument on May 15.

(Dkt# 49) That was “10 weeks before the scheduled oral argument date” but before the Reply Brief was due or filed,

On March 4, I submitted the 47-page, 12,592-word Reply Brief for review (Dkt# 52), along with a Motion to File Oversized Brief (Dkt#51) According to the court’s online Docket, this motion was granted by a “clerk order” on March 23 (Dkt# 53), but, perhaps due to corona-virus related disruptions, I never received an email notifying me of that order, nor did Deputy Attorney General Gregg Zywiec (he so informed me in an email of April 21). I discovered the order only by reviewing the online docket on April 20, when I received the order referred to in the next paragraph. Nor did I receive any notice of the need to file paper copies of the Reply Brief, but I mailed them for filing on April 21, after I discovered the order of March 23. Then, on April 27, according to a “clerk order,” the electronic Reply Brief was filed but “No paper copies are required at this time” (Dkt# 55), and I was so notified by email on that date. But the paper copies I had already mailed were received and filed on the same date and “sent to panel” (Dkt# 58) Thus, the Reply Brief was filed and sent to the panel 18 days before the scheduled oral argument.

But on April 20, before the filing of the Reply Brief, the clerk had filed an order that “The Court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument” and that “This case shall be submitted on the briefs and record, without oral argument, on May 15, 2020” (Dkt# 54) Thus, it appears that the Court made a judgment that the arguments were adequately presented in the briefs before it received and without reading the Appellant’s Reply Brief.

On April 27, I filed a Motion to Transmit Exhibit (Dkt# 57) – People’s trial Exhibit 20, a recording of crime-scene security-cameras videos, showing the homicide and surrounding events – which I believed was relevant to the issue of whether, as argued by the Attorney General, the police had probable cause to arrest the appellant based on “the surveillance video” (Appellee’s Brief, p. 3, 36, 45, 46, 49, 55) but which, appellant argued, gave no hint as to the identity of the perpetrator, apart from the fact that he was African-American. (Appellant’s Reply Brief, pp. 21-22, 23, 44; see ER 1223-1226.) I offered to provide the Court with a copy of the recording “upon request” (Dkt# 57, p. 3). On April 29, this motion was granted (Dkt#60), but I was not asked to provide a copy.

The facts that the Court had already decided on April 20 that the facts were adequately presented in the record, and that the Exhibit or a copy was not actually transmitted or provided to the Court indicate that the Court's review of the record and decision did not include viewing the video-recording.

The case was submitted on the briefs without oral argument on May 15 (Dkt# 63), and a Memorandum Opinion was filed on May 19 (Dkt# 64). On May 31, I filed petitions for panel and *en banc* rehearing, arguing that the panel misconceived a Sixth Amendment ineffective-assistance claim to be a Fourth Amendment claim that a motion to exclude evidence should have been granted. (The panel held that United States Supreme Court law does not require exclusion of evidence obtained as a result of violation of an arrestee's right to be presented to a magistrate without unreasonable delay and prolongation of his detention for the purpose of obtaining additional evidence of probable cause to justify the arrest, whereas appellant's actual claim was that he was denied his right to effective assistance by the failure of his attorney to make a motion to exclude evidence on that ground, where state law does apply the exclusionary rule and the District Judge found that appellant's Fourth Amendment right was clearly violated and said that, if the motion had been made before him, he would have granted it.)

You and your staff would know much better than I, with my limited experience in your Court, but it seems unusual to me that dispositive decisions would be made before the briefing is complete and without a complete record, and that, in fact, there are usually a number of months between completion of briefing and scheduling of oral argument. I note that, according to The Appellate Lawyer Representatives' Guide to Practice in the United States Court of Appeal for the Ninth Circuit, pages 16-17:

E. WHAT HAPPENS AFTER MY CASE HAS BEEN ASSIGNED TO A PANEL?

TO A PANEL? After the cases have been assigned to the panels, the briefs and excerpts of record in each case are distributed to each of the judges scheduled to hear the case. The documents are usually received in the judges' chambers twelve weeks prior to the scheduled time for hearing, and it is the policy of the Court that each judge read all of the briefs prior to oral argument.

1. ORAL ARGUMENT ...

a. How long does it take from the time of the notice of appeal until oral argument? ... For non-priority ... appeals, cases are typically scheduled for oral argument 12 months from the notice of appeal date.

If briefing isn't delayed, this is typically approximately 6-10 months from completion of briefing. For a criminal appeal, cases are typically scheduled for oral argument approximately 4-5 months after briefing is complete.

I electronically filed appellant Wooten's combined Petition for Panel Rehearing and Rehearing *En Banc* on May 31, 2020 – a Sunday – and, presumably, it was not circulated until the next working day, Monday, June 1. General Order 5.4 provides:

5.4. Rehearing En Banc

a. Duties of Clerk

Upon the filing by a party of a petition for rehearing en banc, the Clerk shall circulate a copy to each active judge and to those senior judges who have requested copies.

b. Request for Notice of Panel Vote on Petition for Panel Rehearing and Time Within Which Judges Must Act After Notice

1. Request for Notice

An off-panel judge may request notice of the panel's vote on a petition for panel rehearing and petition for rehearing en banc within 21 days of the circulation of the last-filed petition for rehearing en banc.

There is no indication in the docket that the rehearing petition was circulated. On June 24, 2020, at 9:44 a.m. – the morning of the 23rd day after the filing and *possible* circulation of the Petition for Rehearing – the three-judge panel issued an order denying panel rehearing, which recited that Judges R. Nelson and Bress had voted to deny rehearing en banc, that Judge Block had so recommended, and that “The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc.” (Dkt# 66) Thus, for the off-panel judges to have had a 21-day opportunity to request notice of the panel's vote on the petition and to have requested a vote on whether to rehear the matter en banc: (1) the petition would have had to have been circulated on June 1

or 2, (2) the last day for a judge to have requested notice of the vote and to have requested a vote on en banc rehearing would have been June 22 or 23, and (3) the panel judges – if they waited to vote until after the time for the off-panel judges to request notice of the vote and to request a vote on en banc rehearing – had to have voted on whether to grant or deny panel and en banc rehearing on the 23rd or early on the 24th. This squares with the following statements in the above Appellate Lawyer Representatives’ Guide, pages 123-124, and implies that the panel voted to deny rehearing at nearly the earliest opportunity and without “deliberating” in the sense described:

How long does it take the Court to vote on a petition for rehearing en banc?

From the time a response to a petition for rehearing en banc is filed to an order granting or denying the petition can take as little as as three weeks and as long as several months. During this time judges of the Court may be deliberating whether grant rehearing through a series of internal memoranda and ultimately casting votes on rehearing if a judge requests a formal poll. See generally General Orders 5.4-5.5.

Considering the evidence that the panel decision was made without review of Appellant’s Reply Brief, the fact that it mistook a Sixth Amendment ineffective assistance of counsel contention for a Fourth Amendment unreasonable seizure contention, and the speedy manner in which the rehearing petition was disposed of, I question whether that petition was given a fair review by all the judges.

I appreciate your looking into this matter.

Respectfully,

RICHARD SUCH
Attorney for Appellant
MIGUEL WOOTEN

cc: Judge R. Nelson
Judge Bress
Judge Block

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 1 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MIGUEL ANTONIO WOOTEN,

Petitioner-Appellant,

v.

WARREN L. MONTGOMERY, Warden,

Respondent-Appellee.

No. 18-16657

D.C. No. 3:16-cv-03755-VC
Northern District of California,
San Francisco

ORDER

Before: R. NELSON and BRESS, Circuit Judges, and BLOCK,* District Judge.

The Court has reviewed the letter from counsel for Appellant dated June 25, 2020 (Docket Entry No. 67), which is addressed to Chief Judge Thomas. The letter is procedurally improper, and the issues raised are without merit. The correspondence was forwarded to the Chief Judge, who declined to take further action.

* The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

APPENDIX E

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 18-16657

Docketed: 09/04/2018

Nature of Suit: 3530 Habeas Corpus

Miguel Wooten v. Warren Montgomery

Appeal From: U.S. District Court for Northern California, San Francisco

Fee Status: IFP

Case Type Information:

- 1) prisoner
- 2) state
- 3) 2254 habeas corpus

Originating Court Information:

District: 0971-3 : 3:16-cv-03755-VC

Trial Judge: Vince Chhabria, District Judge

Date Filed: 07/04/2016

Date Order/Judgment:
08/29/2018

Date Order/Judgment EOD:
08/29/2018

Date NOA Filed:
09/01/2018

Date Rec'd COA:
09/01/2018

Prior Cases:

None

Current Cases:

None

MIGUEL ANTONIO WOOTEN (State Prisoner: AK4391)
Petitioner - Appellant,

William Richard Such
Direct: 415-495-3119
[COR LD NTC CJA Appointment]
1120 College Avenue
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v.

WARREN L. MONTGOMERY, Warden
Respondent - Appellee,

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| 09/04/2018 | <u>1</u> 29 pg, 560.38 KB | DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL AND PRO SE APPELLANT. SEND MQ: No. The schedule is set as follows: Appellant Miguel Antonio Wooten opening brief due 10/31/2018. Appellee Warren L. Montgomery answering brief due 11/30/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [10999359] (HC) [Entered: 09/04/2018 11:15 AM] |
| 09/10/2018 | <u>2</u> 9 pg, 357.32 KB | Filed clerk order (Deputy Clerk: CKP): Order to show cause docket fee due [11005636] (CKP) [Entered: 09/10/2018 10:43 AM] |
| 09/13/2018 | <u>3</u> 6 pg, 183.94 KB | Filed Appellant Miguel Antonio Wooten motion to appoint counsel. Deficiencies: No certificate of service. [11011748] (NAC) [Entered: 09/14/2018 10:15 AM] |
| 09/14/2018 | <u>4</u> 6 pg, 44.9 KB | Filed Appellant Miguel Antonio Wooten motion for appointment of counsel and request for new briefing schedule. Deficiencies: No certificate of service. Served on 09/10/2018. [11014598] (QDL) [Entered: 09/17/2018 04:28 PM] |
| 09/25/2018 | <u>5</u> 7 pg, 186.83 KB | Filed Appellant Miguel Antonio Wooten motion to proceed In Forma Pauperis. Deficiencies: None. Served on 09/18/2018. [11025833] (JFF) [Entered: 09/26/2018 10:06 AM] |
| 10/15/2018 | <u>6</u> 2 pg, 18.21 KB | Received copy of District Court order filed on 10/03/2018 to grant in forma pauperis. [11047475] (JFF) [Entered: 10/15/2018 03:42 PM] |
| 11/19/2018 | <u>7</u> 1 pg, 8.23 KB | Filed Appellant Miguel Antonio Wooten letter dated 11/13/2018 re: certificate of service. Paper filing deficiency: None. [11095853] (JFF) [Entered: 11/21/2018 09:32 AM] |
| 11/30/2018 | <u>8</u> 2 pg, 267.89 KB | Filed order (Appellate Commissioner): A review of the district court docket reflects that the district court granted appellant leave to proceed in forma pauperis on October 3, 2018 and that such permission has not been revoked. Accordingly, appellant's in forma pauperis status continues in this court. See Fed. R. App. P. 24(a)(3). Appellant's motion to proceed in forma pauperis on appeal (Docket Entry No. [5]) is therefore unnecessary. Appellant's motion for appointment of counsel (Docket Entry Nos. [3] and [4]) in this appeal from the denial of a 28 U.S.C. 28 U.S.C. § 2254 petition for writ of habeas corpus is granted. See 18 U.S.C. § 3006A(a)(2)(B); Weygaridt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). By this order, the court expresses no opinion as to the merits of this appeal. Counsel will be appointed by separate order. The Clerk shall electronically serve this order on the appointing authority for the Northern District of California, who will locate appointed counsel. The appointing authority shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel. The opening brief and excerpts of record are due January 29, 2019; the answering brief is due February 28, 2019; and the optional reply brief is due within 21 days after service of the answering brief. (MOATT) [11104553] (OC) [Entered: 11/30/2018 10:40 AM] |
| 01/04/2019 | 9 | Received email notice of CJA counsel of record appointment. Attorney(s) William Richard Such for party(s) Appellant Miguel Antonio Wooten, in case 18-16657. [11141052] (DL) [Entered: 01/04/2019 06:52 AM] |
| 01/11/2019 | 10 | Criminal Justice Act electronic voucher created. (Counsel: Mr. William Richard Such for Miguel Antonio Wooten) [11150856] (BJK) [Entered: 01/11/2019 04:42 PM] |
| 01/29/2019 | 11 | Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Miguel Antonio Wooten. New requested due date is 03/01/2019. [11170538] [18-16657] (Such, William) [Entered: 01/29/2019 09:08 AM] |
| 01/29/2019 | 12 | Streamlined request [11] by Appellant Miguel Antonio Wooten to extend time to file the brief is approved in part. Streamlined requests only allow for a 30 day extension of time to file the brief. Amended briefing schedule: Appellant Miguel Antonio Wooten opening brief due 02/28/2019. Appellee Warren L. Montgomery, Warden answering brief due 04/01/2019. The optional reply brief is due 21 days from the date of service of the answering brief. [11170726] (JN) [Entered: 01/29/2019 09:59 AM] |
| 02/20/2019 | <u>13</u> 4 pg, 125.08 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion to extend time to file Opening brief until 04/15/2019. Date of service: 02/20/2019. [11201148] [18-16657] (Such, William) [Entered: 02/20/2019 12:52 PM] |
| 02/22/2019 | <u>14</u> 1 pg, 194.8 KB | Filed clerk order (Deputy Clerk: LBS): Appellant's unopposed motion (Docket Entry No. 13) for an extension of time to file the opening brief is granted. The opening brief is due April 15, 2019. The answering brief is due May 15, 2019. The optional reply brief is due within 21 days after service of the answering brief. [11204866] (OC) [Entered: 02/22/2019 02:44 PM] |
| 03/30/2019 | <u>15</u> 4 pg, 41.19 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion to extend time to file Opening brief until 05/15/2019. Date of service: 03/30/2019. [11247360] [18-16657] (Such, William) [Entered: 03/30/2019 10:55 AM] |
| 04/02/2019 | <u>16</u> 1 pg, 185.49 KB | Filed clerk order (Deputy Clerk: LKK):(ECF Filing) filed by Appellant Miguel Antonio Wooten; Granting Motion [15] (ECF Filing) motion to extend time to file brief filed by Appellant Miguel Antonio Wooten. Appellant Miguel Antonio Wooten opening brief due 05/15/2019. Appellee Warren L. Montgomery, Warden answering brief due 06/14/2019. The optional reply brief is due 21 days after service of the answering brief. [11250216] (LKK) [Entered: 04/02/2019 01:20 PM] |

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| 05/04/2019 | <u>17</u> 5 pg, 43.79 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion to extend time to file Opening brief until 06/14/2019. Date of service: 05/04/2019. [11286779] [18-16657] (Such, William) [Entered: 05/04/2019 05:05 PM] |
| 05/06/2019 | <u>18</u> 1 pg, 90.66 KB | Filed clerk order (Deputy Clerk: LBS): Appellant's unopposed motion [17] for an extension of time to file the opening brief is granted. The opening brief is due June 14, 2019. The answering brief is due July 15, 2019. The optional reply brief is due within 21 days after service of the answering brief. [11287664] (LBS) [Entered: 05/06/2019 01:20 PM] |
| 06/14/2019 | <u>19</u> | STRICKEN PER ORDER [24]. Submitted (ECF) Opening Brief for review. Submitted by Appellant Miguel Antonio Wooten. Date of service: 06/14/2019. [11332127] [18-16657]--[COURT UPDATE: Attached corrected PDF of brief, removed motion (refiled in correct entry [21]). 07/02/2019 by LA] (Such, William) [Entered: 06/14/2019 02:07 PM] |
| 06/14/2019 | <u>20</u> 2301 pg, 263.6 MB | Submitted (ECF) excerpts of record. Submitted by Appellant Miguel Antonio Wooten. Date of service: 06/14/2019. [11332764] [18-16657]--[COURT UPDATE: Attached corrected PDFs of excerpts. 07/02/2019 by LA] (Such, William) [Entered: 06/14/2019 06:30 PM] |
| 06/18/2019 | <u>21</u> 4 pg, 40.41 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion to file oversized brief. Date of service: 06/18/2019. [11336493] [18-16657] (Such, William) [Entered: 06/18/2019 05:39 PM] |
| 06/28/2019 | <u>22</u> | Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Warren L. Montgomery. New requested due date is 08/14/2019. [11348980] [18-16657] (Zywicke, Gregg) [Entered: 06/28/2019 03:02 PM] |
| 07/01/2019 | <u>23</u> | Streamlined request [22] by Appellee Warren L. Montgomery to extend time to file the brief is not approved because it is unnecessary. The briefing schedule is stayed. See 9th Cir. R. 32-2. [11349873] (SB) [Entered: 07/01/2019 09:16 AM] |
| 07/30/2019 | <u>24</u> 1 pg, 116.17 KB | Filed order (Appellate Commissioner): Appellant's motion (Docket Entry No. [21]) for leave to file an oversized opening brief consisting of 14,679 words is denied. The Clerk shall strike the opening brief submitted at Docket Entry No. [19]. Within 14 days after the date of this order, appellant shall file an opening brief that does not exceed 14,000 words. See 9th Cir. R. 32-1(a). The answering brief is due within 30 days after service of the opening brief. The optional reply brief is due within 21 days after service of the answering brief. (Pro Mo) [11380930] (OC) [Entered: 07/30/2019 10:58 AM] |
| 08/13/2019 | <u>25</u> 66 pg, 260.77 KB | Submitted (ECF) Opening Brief for review. Submitted by Appellant Miguel Antonio Wooten. Date of service: 08/13/2019. [11395925] [18-16657] (Such, William) [Entered: 08/13/2019 01:20 PM] |
| 08/13/2019 | <u>26</u> 2 pg, 95.34 KB | Filed clerk order: The opening brief [25] submitted by Miguel Antonio Wooten is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The Court has reviewed the excerpts of record [20] submitted by Miguel Antonio Wooten. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11396169] (SML) [Entered: 08/13/2019 02:48 PM] |
| 08/20/2019 | <u>27</u> | Received 7 paper copies of Opening Brief [25] filed by Miguel Antonio Wooten. [11404180] (SD) [Entered: 08/20/2019 03:15 PM] |
| 08/20/2019 | <u>28</u> 1 pg, 242.64 KB | ENTRY UPDATED: Received Appellant Miguel Antonio Wooten excerpts of record [20] in 13 volumes. Deficiencies: paper copies of volumes 2, 4-7, and 10 do not match the electronic versions, insufficient copies of volumes 8 and 10. Notified counsel (See attached notice). [11404211]--[Edited 09/04/2019 by SML to reflect the paper copies of the excerpts of record were released for pick up by counsel on 09/04/2019] (SML) [Entered: 08/20/2019 03:39 PM] |
| 08/22/2019 | <u>29</u> 4 pg, 40.75 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion for miscellaneous relief [motion for return of paper copies of six volumes of Excerpts of Record]. Date of service: 08/22/2019. [11407644] [18-16657] (Such, William) [Entered: 08/22/2019 04:55 PM] |
| 08/30/2019 | <u>30</u> 2 pg, 36.67 KB | Filed order (Appellate Commissioner): Appellant's motion for return of paper copies of appellants excerpts of record is construed as a motion for substitution and conforming of appellant's excerpts of record to the electronically filed documents. So construed, the motion (Docket Entry No. [29]) is granted. The Clerk has identified the following corrections to appellant's excerpts of record: 1) Volume 2: paper copies are missing the first 3 pages, pages 158A-158C; 2) Volume 4: paper copies are missing pages 504A-504G; 3) Volume 5: paper copies are missing pages 748A-748G; 4) Volume 6: page numbers do not match the electronic version: electronic page 896 is numbered 897 in the paper copies; Volume 6 consists of pages 896-1155 and the paper copies consist of pages 897-1207; 5) Volume 7: the 2nd page of electronic version is page 1184, the second page of the paper copies is page 1185; volume 7 consists of pages 1184-1316 and the paper copies of volume 7 consist of pages 1185-1365; 6) Volume 8: the court received 3 paper copies but requires 4; 7) Volume 10: Index of electronic version does not match the index in the paper copies: page 1 of the electronic version is a placeholder that states "1734-1735 intentionally left blank" that placeholder is not included in the paper copies, and only 3 of the required 4 copies were received. Within 14 days after the date of this order, appellant shall make the corrections noted in this order and submit the required copies of the corrected excerpts of record. Appellee's answering brief is |

due within 30 days after service of appellant's corrected excerpts of record. Counsel Such may submit his claim for the expense on his voucher under the Criminal Justice Act. (AppComm Direct Criminal) [11416383] (HC) [Entered: 08/30/2019 09:59 AM]

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| 09/11/2019 | 31 | Received corrected deficiency of 4 paper copies of each volume of the excerpts of record that match the electronic version from Appellant Miguel Antonio Wooten. [11429995] (SML) [Entered: 09/12/2019 03:21 PM] |
| 09/11/2019 | 32 | Filed 4 paper copies of excerpts of record [20] in 13 volume(s) filed by Appellant Miguel Antonio Wooten. [11429998] (SML) [Entered: 09/12/2019 03:22 PM] |
| 10/09/2019 | 33 | Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Warren L. Montgomery. New requested due date is 11/12/2019. [11460004] [18-16657] (Zywicke, Gregg) [Entered: 10/09/2019 04:29 PM] |
| 10/10/2019 | 34 | ENTRY UPDATED. Streamlined request [33] by Appellee Warren L. Montgomery to extend time to file the brief is approved. Amended briefing schedule: Appellee Warren L. Montgomery, Warden answering brief due 11/12/2019. The optional reply brief is due 21 days from the date of service of the answering brief. (Updated due date of Appellee's answering brief. Jen) [11460166]—[Edited 10/10/2019 by JN] (JN) [Entered: 10/10/2019 07:08 AM] |
| 11/08/2019 | <u>35</u> 5 pg, 35.28 KB | Filed (ECF) Appellee Warren L. Montgomery Motion to extend time to file Answering brief until 12/12/2019. Date of service: 11/08/2019. [11493787] [18-16657] (Zywicke, Gregg) [Entered: 11/08/2019 10:42 AM] |
| 11/12/2019 | <u>36</u> 1 pg, 89.86 KB | Filed clerk order (Deputy Clerk: LBS):Appellee's late unopposed motion [35] for an extension of time to file the answering brief is granted. The answering brief is due December 12, 2019. The optional reply brief is due within 21 days after service of the answering brief. [11495487] (LBS) [Entered: 11/12/2019 09:45 AM] |
| 12/12/2019 | <u>37</u> 74 pg, 317.78 KB | Submitted (ECF) Answering Brief for review. Submitted by Appellee Warren L. Montgomery. Date of service: 12/12/2019. [11530903] [18-16657] (Zywicke, Gregg) [Entered: 12/12/2019 05:43 PM] |
| 12/12/2019 | <u>38</u> 30 pg, 2.71 MB | Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Warren L. Montgomery. Date of service: 12/12/2019. [11530905] [18-16657]—[COURT UPDATE: Attached corrected excerpts. 12/16/2019 by SML] (Zywicke, Gregg) [Entered: 12/12/2019 05:47 PM] |
| 12/16/2019 | <u>39</u> 2 pg, 95.07 KB | Filed clerk order: The answering brief [37] submitted by Warren L. Montgomery is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The supplemental excerpts of record [38] submitted by Warren L. Montgomery are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11533974] (SML) [Entered: 12/16/2019 03:12 PM] |
| 12/17/2019 | 41 | Received 3 paper copies of supplemental excerpts of record [38] in 1 volume(s) filed by Appellee Warren L. Montgomery. [11542744] (SML) [Entered: 12/23/2019 04:02 PM] |
| 12/18/2019 | 40 | Received 6 paper copies of Answering Brief [37] filed by Warren L. Montgomery. [11536416] (RG) [Entered: 12/18/2019 07:36 AM] |
| 01/05/2020 | 42 | Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant Miguel Antonio Wooten. New requested due date is 02/05/2020. [11551050] [18-16657] (Such, William) [Entered: 01/05/2020 03:28 PM] |
| 01/06/2020 | 43 | Streamlined request [42] by Appellant Miguel Antonio Wooten to extend time to file the brief is not approved because the request is late. The filer must file a motion per 9th Cir. R. 31-2.2(b). [11551226] (JN) [Entered: 01/06/2020 09:06 AM] |
| 01/06/2020 | <u>44</u> 3 pg, 881.44 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion to extend time to file a reply until 02/05/2020. Date of service: 01/06/2020. [11552447] [18-16657] (Such, William) [Entered: 01/06/2020 04:17 PM] |
| 01/07/2020 | <u>45</u> 1 pg, 89.14 KB | Filed clerk order (Deputy Clerk: LBS): Appellant's late unopposed motion [44] for an extension of time to file the reply brief is granted. The reply brief is due February 5, 2020. [11553118] (LBS) [Entered: 01/07/2020 10:16 AM] |
| 01/17/2020 | 46 | This case is being considered for an upcoming oral argument calendar in San Francisco |

Please review the San Francisco sitting dates for May 2020 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file Form 32 within 3 business days of this notice using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not

able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document**: Correspondence to Court; **Subject**: request for mediation).[11565816]. [18-16657] (AW) [Entered: 01/17/2020 09:21 AM]

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| 01/29/2020 | <u>47</u> 3 pg, 2.07 MB | Filed (ECF) Appellant Miguel Antonio Wooten Unopposed Motion to extend time to file Reply brief until 03/06/2020. Date of service: 01/29/2020. [11578591] [18-16657] (Such, William) [Entered: 01/29/2020 03:06 PM] |
| 02/04/2020 | <u>48</u> 1 pg, 99.97 KB | Filed clerk order (Deputy Clerk: OC): Petitioner-Appellant Miguel Wooten's unopposed Motion to Extend Time to File Reply Brief (Dkt. [47]) is GRANTED. Petitioners-Appellant's reply brief shall be due March 6, 2020. No further extensions will be granted. [11585161] (OC) [Entered: 02/04/2020 02:27 PM] |
| 03/01/2020 | <u>49</u> | Notice of Oral Argument on Friday, May 15, 2020 - 09:00 A.M. - Courtroom 3 - San Francisco CA. View the Oral Argument Calendar for your case here . Be sure to review the GUIDELINES for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible). If you are the specific attorney or self-represented party who will be arguing, use the ACKNOWLEDGMENT OF HEARING NOTICE filing type in CM/ECF no later than 21 days before Friday, May 15, 2020. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[11613904]. [Array, 18-16657] (AW) [Entered: 03/01/2020 06:16 AM] |
| 03/02/2020 | <u>50</u> 3 pg, 200.57 KB | Authorization for CJA attorney Mr. William Richard Such for Miguel Antonio Wooten to travel to San Francisco to attend oral argument on 05/15/2020. See attached letter for details. [11614260] (KJC) [Entered: 03/02/2020 09:41 AM] |
| 03/04/2020 | <u>51</u> 7 pg, 51.5 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion to file oversized brief. Date of service: 03/04/2020. [11618565] [18-16657]--[COURT UPDATE: Removed PDF of brief. Please see [52]. 03/04/2020 by SML] (Such, William) [Entered: 03/04/2020 04:21 PM] |
| 03/04/2020 | <u>52</u> 54 pg, 220.5 KB | Submitted (ECF) Reply Brief for review. Submitted by Appellant Miguel Antonio Wooten. Date of service: 03/04/2020. [11618601]--[COURT ENTERED FILING to correct entry [51].] (SML) [Entered: 03/04/2020 04:43 PM] |
| 03/23/2020 | <u>53</u> 1 pg, 99.43 KB | Filed clerk order (Deputy Clerk: OC): Appellant's "Motion For Leave To Exceed Type-Volume Limitations On Appellant's Reply Brief" (Docket Entry No. [51]) is granted. [11639216] (OC) [Entered: 03/23/2020 04:31 PM] |
| 04/20/2020 | <u>54</u> 1 pg, 97.55 KB | Filed clerk order (Deputy Clerk: OC): The Court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. This case shall be submitted on the briefs and record, without oral argument, on May 15, 2020 in San Francisco, California. Fed. R. App. P. 34(a)(2). [11666259] (OC) [Entered: 04/20/2020 03:45 PM] |
| 04/27/2020 | <u>55</u> 1 pg, 91.11 KB | Filed clerk order: The reply brief [52] submitted by Miguel Antonio Wooten is filed. No paper copies are required at this time. [11672829] (SML) [Entered: 04/27/2020 02:03 PM] |
| 04/27/2020 | <u>56</u> 81 pg, 54.42 MB | Submitted (ECF) further excerpts of record. Submitted by Appellant Miguel Antonio Wooten. Date of service: 04/27/2020. [11673317] [18-16657] (Such, William) [Entered: 04/27/2020 04:30 PM] |
| 04/27/2020 | <u>57</u> 5 pg, 45.36 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion to transmit exhibit. Date of service: 04/27/2020. [11673345] [18-16657] (Such, William) [Entered: 04/27/2020 04:37 PM] |
| 04/27/2020 | <u>58</u> | Received 7 paper copies of Reply Brief [52] filed by Miguel Antonio Wooten. (sent to panel) [11673367] (SD) [Entered: 04/27/2020 04:44 PM] |
| 04/28/2020 | <u>59</u> 5 pg, 46.06 KB | Filed (ECF) Appellant Miguel Antonio Wooten Motion for miscellaneous relief [motion for leave to file Further Excerpts of Record]. Date of service: 04/28/2020. [11674202] [18-16657] (Such, William) [Entered: 04/28/2020 11:12 AM] |
| 04/29/2020 | <u>60</u> 1 pg, 100.25 KB | Filed clerk order (Deputy Clerk: OC): Appellant's "Motion to Transmit Exhibit" (Docket Entry No. [57]) and "Motion for Leave to File Further Excerpts of Record" (Docket Entry No. [59]) are granted. [11675757] (OC) [Entered: 04/29/2020 01:48 PM] |
| 04/29/2020 | <u>61</u> 1 pg, 92.32 KB | Filed clerk order: The further excerpts of record [56] submitted by Miguel Antonio Wooten are filed. No paper copies are required at this time. [11676094] (SML) [Entered: 04/29/2020 04:27 PM] |
| 05/04/2020 | <u>62</u> | Filed (ECF) Appellant Miguel Antonio Wooten citation of supplemental authorities. Date of service: |

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| 4 pg, 70.57 KB | 05/04/2020. [11679768] [18-16657] (Such, William) [Entered: 05/04/2020 02:19 PM] |
| 63 | SUBMITTED ON THE BRIEFS TO RYAN D. NELSON, DANIEL A. BRESS and FREDERIC BLOCK. [11692080] (ORW) [Entered: 05/15/2020 10:53 AM] |
| 64 10 pg, 305.63 KB | FILED MEMORANDUM DISPOSITION (RYAN D. NELSON, DANIEL A. BRESS and FREDERIC BLOCK) AFFIRMED. FILED AND ENTERED JUDGMENT. [11694989] (MM) [Entered: 05/19/2020 09:10 AM] |
| 65 24 pg, 306.43 KB | Filed (ECF) Appellant Miguel Antonio Wooten petition for panel rehearing and petition for rehearing en banc (from 05/19/2020 memorandum). Date of service: 05/31/2020. [11706056] [18-16657] (Such, William) [Entered: 05/31/2020 11:11 AM] |
| 66 1 pg, 121.42 KB | Filed order (RYAN D. NELSON, DANIEL A. BRESS and FREDERIC BLOCK) The panel has unanimously voted to deny Appellant's petition for panel rehearing. Judge R. Nelson and Judge Bress have voted to deny the petition for rehearing en banc, and Judge Block so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc (Docket Entry No. [65]) is DENIED. [11731837] (WL) [Entered: 06/24/2020 09:44 AM] |
| 67 6 pg, 77.95 KB | Filed (ECF) Appellant Miguel Antonio Wooten Correspondence: Possible irregularities in decision. Date of service: 06/27/2020 [11735755] [18-16657] (Such, William) [Entered: 06/27/2020 01:05 PM] |
| 68 1 pg, 96.34 KB | Filed order (RYAN D. NELSON, DANIEL A. BRESS and FREDERIC BLOCK): The Court has reviewed the letter from counsel for Appellant dated June 25, 2020 (Docket Entry No. [67]), which is addressed to Chief Judge Thomas. The letter is procedurally improper, and the issues raised are without merit. The correspondence was forwarded to the Chief Judge, who declined to take further action. [11740253] (AF) [Entered: 07/01/2020 04:28 PM] |
| 69 1 pg, 92.81 KB | MANDATE ISSUED.(RDN, DAB and FB) [11740794] (JFF) [Entered: 07/02/2020 10:39 AM] |