No. _____

IN THE

Supreme Court of the United States

ARTURO BELTRAN,

Petitioner,

v.

CRAIG KOENIG, WARDEN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

CUAUHTEMOC ORTEGA
Federal Public Defender
MARK R. DROZDOWSKI*
Deputy Federal Public Defenders
321 East 2nd Street
Los Angeles, California 90012
Telephone: (213) 894-2854
Facsimile: (213) 894-0081
Mark_Drozdowski@fd.org

Attorneys for Petitioner
**Counsel of Record*

QUESTION PRESENTED

During a colloquy on a plea agreement to a 24-year sentence, petitioner said that he did not understand all of the rights and consequences of the plea read to him by an interpreter. The trial court responded, "Good," tore up petitioner's plea waiver form, instructed the prosecutor to call her first witness, and declared that "All deals are off the table." Petitioner was tried, convicted, and sentenced to 130 years to life in state prison. Is petitioner's claim that the court's abrupt and arbitrary rejection of his plea agreement deprived him of due process cognizable in habeas, or does it "fail[] to present a constitutional issue cognizable for habeas review," as the Ninth Circuit held in denying relief?

PARTIES AND LIST OF PRIOR PROCEEDINGS

The parties to this proceeding are Petitioner Arturo Beltran and Respondent Craig Koenig, Warden. The California Attorney General represents Respondent.

On August 25, 2010, Beltran was convicted by jury in Los Angeles County Superior Court in *People v. Beltran*, case no. KA088180, Judge Mike Camacho, presiding, of sexual assault against his minor daughters. 2 clerk's transcript of trial ("CT"), docket 52, lodgment 16 at 248-296.[1] On December 13, 2010, Judge Camacho sentenced Beltran to 130 years to life in state prison. 2 CT 298. Judge Bruce F. Marrs made the pre-trial ruling that is the subject of this petition. Petitioner's Appendix filed concurrently herewith ("Pet. App.") 96.

The California Court of Appeal, per Justices Sandy R. Kriegler, Paul A. Turner, and Orville A. Armstrong, affirmed the judgment on appeal in an unpublished opinion filed on June 13, 2012 in *People v. Beltran*, case no. B229725. Pet. App. 74-94. The California Supreme Court denied Beltran's petition for review on September 19, 2012 in case no. S204281. Pet. App. 73.

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[1] Unless otherwise noted, all references to "docket" are to the district court docket in Beltran's federal habeas corpus case.

On March 7, 2013, Beltran timely filed a federal habeas corpus petition in *Arturo Beltran v. Matthew Cate, Secretary, California Department of Corrections and Rehabilitation*, C.D. Cal. case no. LACV 13-1624-JLS (LAL). Docket 1. On August 22, 2017, United States Magistrate Judge Louise A. La Mothe filed a report recommending that Beltran's habeas petition be denied and the action dismissed with prejudice. Pet. App. 48-72. On March 6, 2018, United States District Judge Josephine L. Staton accepted the recommendation and entered judgment against Beltran with prejudice. Pet. App. 45-47.

On September 25, 2018, the Ninth Circuit granted a certificate of appealability on the issue whether "appellant was deprived of due process when the trial court refused to accept appellant's plea, including whether this claim is procedurally defaulted." Pet. App. 43. On August 25, 2020, the Ninth Circuit, per the Honorable Consuelo M. Callahan and Patrick J. Bumatay, Circuit Judges, and Michael H. Watson, United States District Judge for the Southern District of Ohio, sitting by designation, affirmed the judgment in an unpublished memorandum decision in case no. 18-55528. Pet. App. 39-42.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Arturo Beltran petitions for a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals affirming the judgment against him in his habeas corpus action.

OPINIONS BELOW

The Ninth Circuit's memorandum affirming the district court's final judgment is unreported. Pet. App. 39-42. The district court's final judgment and its order accepting the magistrate judge's report and recommendation and dismissing the habeas action against Beltran with prejudice are unreported. Pet. App. 45-47.

The opinion by the California Court of Appeal affirming Beltran's judgment on direct appeal is unreported. Pet. App. 74-94. The order by the California Supreme Court denying Beltran's petition for review is unreported. Pet. App. 73.

JURISDICTION

The Ninth Circuit's judgment affirming the judgment against Beltran was filed and entered on August 25, 2020. Pet. App. 39-42; Ninth Circuit docket 46. The district court had jurisdiction under 28 U.S.C. §§ 2241 and 2254. The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. §§ 1291, 2253, and 2254. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Supreme Court Rule 13.1 and the Court's order of March 19, 2020 extending the filing deadline for certiorari petitions by another 60 days because of Covid-19.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the U.S. Constitution

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. § 2254(d)

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with

respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

28 U.S.C. § 2254(e)

"(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."

STATEMENT OF THE CASE

I. The Trial Court Rejects the Plea Agreement Before the Preliminary Hearing

In September 2009, Beltran was charged with five felony counts of sexual assault against his minor daughters "D.B." (or "D.") and "G.B." (or "G."). 2 CT 277. The charges "carrie[d] a potential life sentence." Pet. App. 97.

On December 14, 2009, the date set for the preliminary hearing, Beltran appeared before Judge Bruce F. Marrs in the Los Angeles County Superior Court in Pomona. Pet. App. 96. Beltran's lawyer, Brian Virag, had substituted in for the public defender on November 2, 2009. Pet. App. 101-102. A Spanish interpreter was present to assist Beltran. Pet. App. 96. Defense counsel explained to the court (1) that at the last hearing, the prosecutor made a plea offer of 20 years but had just taken that offer "off the table," was now offering 24 years, and said "that your client has five or ten

minutes to decide"; (2) that he had discussed the 24-year offer with Beltran; and (3) that he was seeking to continue the preliminary hearing in order to have "an adequate opportunity to prepare for the prelim and/or explore further settlement opportunities." Pet. App. 96-100. Counsel said he had received videotapes of interviews of the alleged victims "maybe a week ago, a week and a half at best" and that "this case had never been continued before." Pet. App. 97-98. He said he had spent the last several hours advising Beltran "regarding all of the possibilities and the offers that have been extended" but sought a continuance of seven to eight days so that Beltran could discuss the offer with his family. Pet. App. 99-100.

Deputy District Attorney Trudi White-Black objected to a continuance and said she had two alleged victims present to testify at the preliminary hearing. Pet. App. 102-103. She said that if Beltran "doesn't want to take the offer, that's fine. We are ready to proceed to prelim, and we'll just do it that way." Pet. App.103.

Defense counsel replied that "my client has signed off on the plea agreement, on the plea form, that was communicated based on the offer that was given by the People this morning, and my client does wish to take that particular deal. That was his indication to me, and I don't believe that that has changed at all, even in light of what I had mentioned to the court." *Id.* Counsel continued: "And so essentially what I would be indicating to the

court now, if the court is not inclined to provide any further continuances on this matter, that my client did indicate to me that he does want to take -- accept the offer that was extended by the People and would like to finish the case today, Your Honor." Pet. App. 103-104. Counsel gave copies of the plea form to the judge and the district attorney. Pet. App. 104-105.

The following plea colloquy ensued:

> The Court: Mr. Beltran, I have what appears to be a pink waiver of rights form that seems to have initials in the little boxes and what also appears to be a signature back here on the back page. [¶] Is that your initials and the signature on the form?
>
> The Defendant: Yes.
>
> The Court: And did you place the initials and signature on the form?
>
> The Defendant: Yes.
>
> The Court: While you were doing that, did the interpreter here read to you the paragraphs on each of the pages with your constitutional rights and consequences?
>
> The Defendant: Yes.
>
> The Court: While the interpreter was reading these constitutional rights and consequences to you, did you understand them?
>
> The Defendant: Not all of it.
>
> The Court: Good. [¶] Call your first witness.
>
> Ms. White-Black: Thank you, Your Honor.

> The Court: All deals are off the table.
>
> Mr. Virag: Your Honor --
>
> The Court: No. Counsel, we've done what we're going to do.
>
> Mr. Virag: I would ask, Your Honor, please, Your Honor -- Your Honor, I've been before Your Honor many times, and I just need one moment. I've been over this for two hours.
>
> The Court: We cannot do that. I've just torn up the waiver of rights form. I'm not going to take a guilty plea from a not guilty man. Never. [¶] Call your first witness, please.
>
> Ms. White-Black: Thank you, Your Honor.

Pet. App. 106-107.

The prosecutor then called one of the alleged victims as a witness. Pet. App. 107-108. Before the witness gave any substantive testimony, defense counsel asked to address the court. Pet. App. 108. He said: "Before we go any further, I had an opportunity to speak with my client just now, and he had indicated to me that it is his desire to take the deal, and he does want to do it." Pet. App. 108-109.

The judge said, "I do have a problem, counsel." Pet. App. 109.

Defense counsel replied: "[H]e indicated to me that it is his desire to take the deal, and the only issue that he had a problem with was the

restitution and how he would pay any restitution that was due"; "he said that he doesn't have money to pay because he's going to be incarcerated." *Id.*

Counsel explained that he did not "want the court to misconstrue what Mr. Beltran's intentions are in this case." *Id.* Beltran initialled all the boxes in the plea form, signed the form, and "had only one question regarding restitution. And if the court wishes to inquire regarding that, then that would be fine." *Id.*

Counsel continued: "I do want to indicate to the court that he's not not pleading to the deal. It's just because he had a question with regard to restitution, Your Honor. I don't want this court to misconstrue his plan. He wants the plead [sic], that's what he had indicated to me." *Id.* Beltran confirmed on the record that was correct. Pet. App. 110.

The court responded: "He has looked extremely reluctant all the way through this entire process. [¶] Motion to change plea at this point will be denied. [¶] Let's finish the prelim, and he'll have ample opportunity to plead at some future time after he's seen the evidence, should he wish to do so." *Id.*

The preliminary hearing proceeded and Beltran was held to answer the charges. 1 CT 101. On December 31, 2009, an information was filed charging Beltran with 15 counts of lewd and lascivious acts and sexual assault against two of his minor daughters under California Penal Code §§ 269, 288 and 288.7. *Id.* at 104-115. Virag was relieved as defense counsel

and replaced by the Los Angeles County Deputy Public Defender Veronica Verdugo. *Id.* at 117, 122. Beltran pleaded not guilty to all counts and denied the special allegations. *Id.* at 122-123. Judge Mike Camacho was assigned to the case and presided at trial. 2 RT B1.[2]

II. Trial

The parties gave their opening statements on August 13, 2010. *Id.* at 144-145. The prosecution presented testimony that Petitioner sexually molested D.B. a number of times from the time she was 10 or 11 years old until she was 16 and that he molested G.B. over a period of several months when she was in the third grade. Pet. App. 51; 2 CT 278. D.B. and G.B. testified, as did their mother, "R.L.," their younger sisters "A.B." and "N.B.," and several law enforcement officers. Pet. App. 50-51; 1 RT (master index to reporter's transcript).

R.L. testified that she and Beltran had been in a relationship for 20 years, had been married for nine years, and had five children together, including the alleged victims. 2 RT 346-348. She was a stay-at-home mother and Beltran worked and "always provided financial support" for the family. *Id.* at 398. She and Beltran had a lot of fights and they separated twice -- he

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[2] "RT" refers to the reporter's transcript of trial. *See* docket 52, lodgment 17.

left the home, the second time, in 2008, for about eight months. *Id.* at 403; 3 RT 619. During this separation, he continued to financially support the family. 2 RT 368. R.L. asked him to return, and all of the children told her they wanted him to return. *Id.* at 369.

R.L. testified that Beltran accused her of cheating on him, and she told a police officer that the reason there were so many problems was because she had been cheating on him. 3 RT 617-618. She testified that she once saw Beltran "with a woman in his arms, inside [their] apartment." *Id.* at 617. Just before she contacted the police about the alleged sexual abuse, Beltran told her he didn't love her anymore and wanted a divorce. *Id.* at 629. She never took the first step to get a divorce; it was always Beltran who said he wanted a divorce. *Id.* at 630.

Beltran testified in his own defense and denied any wrongdoing. Pet. App. 52; 5 RT 1293, 1304. Beltran said he never touched any of his children in a sexual manner. 5 RT 1304. He explained that D.B. was unhappy with him because he had looked at her "Myspace" page on her computer and disapproved of her boyfriend, who looked like a gang member to him. *Id.* at 1295-1296. He and his wife had a lot of marital problems and he moved out of the house several times. *Id.* at 1293-1296. He hit R.L. once, when he discovered she had been unfaithful. *Id.* at 1303. He asked R.L. to take D.B.

to the doctor when D.B. was dizzy, nauseous, and possibly pregnant. *Id.* at 1299-1300. (R.L. confirmed this in her testimony. 3 RT 651.)

Four witnesses testified that Beltran's relationships with the alleged victims appeared normal and that R.L. accused Beltran of being unfaithful and seemed jealous of and angry with him. *See, e.g.*, 5 RT 1249-1250, 1252-1253, 1259-1260, 1269, 1283-1285.

The prosecutor argued in closing that the testimony of D.B. and G.B. was credible and that that Beltran was guilty on all counts. *Id.* at 1503-1505, 1519. Defense counsel argued that she could see Beltran's wife "putting her kids up to it because she's so sick and tired of the situation, fed up with her husband constantly threatening her to leave." *Id.* at 1536. "What better way to go after a man than to say you did something to my kids. What better way to ruin a person when you're so sick and tired and you love him but he doesn't love you. He's repeatedly told you . . . I don't want to be here. What better way to get even?" *Id.*

Jury deliberations began on Thursday, August 19, 2010 at 11:10 a.m. 2 CT 188. The jury deliberated on August 20, 23, 24 and most of August 25 until it reached a verdict at 2:00 p.m. on the 25th. *Id.* at 187-188, 194-196, 198-199, 203-208, 263-264. A jury note reported that Juror 10 had previously been accused of rape and that some jurors thought he might be biased. *Id.* at 189. The juror had not disclosed this accusation in voir dire. Pet. App. 79.

As the Court of Appeal noted, "[t]he prosecutor urged the juror be removed for bias" and the court did so, replacing him with an alternate. Pet. App. 79-80. During deliberations, the jury asked for a copy of the instructions, readbacks of testimony, and other information. 2 CT 186, 190-193, 197, 201-202, 247.

The jury convicted Beltran on all counts. *Id.* at 265-268; 6 RT 2714-2720; Pet. App. 75. Beltran was convicted of committing lewd acts upon G.B., a child under the age of 14 (Penal Code § 288(a)) (counts 1 and 2); sodomy of G.B., a child under the age of 10 (Penal Code § 288.7(a)) (count 3); committing a lewd act upon D.B., a child under the age of 14 (Penal Code § 288(a)) (count 4); continuous sexual abuse of D.B. (Penal Code § 288.5(a)) (count 5); aggravated sexual assault (rape) of a child as to G.B. (Penal Code § 269(a)(1)) (count 6); and aggravated sexual assault (rape) of a child as to D.B. (Penal Code § 269(a)(1)) (counts 7-15). *Id.* As to all counts, the jury found Petitioner had committed offenses upon multiple victims (Penal Code § 667.61(b)). *Id.*

At the sentencing hearing on December 13, 2010, R.L. said that she and her daughters had forgiven Beltran and she asked the court to have mercy on him. 6 RT 3004-3005. She said that "[i]n spite of everything, he was a good father to them." *Id.* at 3005. Beltran's daughter A.B. said that she forgave him. *Id.* at 3006. Judge Camacho sentenced Beltran to 130 years to life in state prison. Pet. App. 75; 2 CT 298; 6 RT 3010.

III. State Appeal

Beltran argued in his supplemental brief on direct appeal that the trial court's arbitrary rejection of the plea bargain constituted an abuse of discretion and a denial of his federal due process and his rights under state law. Docket 15, lodgment 4 at 1. He cited the Fifth and Fourteenth Amendments to the United States Constitution and four United States Supreme Court cases in support of his due process argument. *Id.* at 5-6. Respondent argued that Beltran's claim lacked "merit because no agreement was formed" and the court did not abuse its discretion in rejecting the deal. Docket 15, lodgment 5 at 27 (emphasis deleted). Respondent did not argue that the claim was procedurally barred. *Id.* at 27-33.

In a letter dated April 23, 2012, the California Court of Appeal noted "[i]t appears defendant did not file a motion under Penal Code section 995 to challenge the magistrate's refusal to go forward with a guilty plea. It further appears that no discussions were held on the record regarding a plea after defendant was held to answer at the preliminary hearing." *See* Ninth Circuit docket 22. The court directed the parties "to address, in letter form, whether the failure to file a motion under Penal Code section 995 or request enforcement of the agreement forfeits the issue raised in the supplemental opening brief." *Id.* The court added that "[t]he parties may also address whether defendant suffered actual prejudice or was denied a fair trial as a

result of the magistrate's actions under People v. Pompa-Ortiz." *Id.*[3] California Penal Code § 995(a) states that "the indictment or information shall be set aside by the court in which the defendant is arraigned, upon his or her motion, in either of the following cases: . . . (2) If it is an information: (A) That before the filing thereof the defendant had not been legally committed by a magistrate. (B) That the defendant had been committed without reasonable or probable cause."

Beltran argued that a "Penal Code section 995 motion lies to challenge irregularities in the preliminary examination procedures, not to challenge irregularities in plea procedures," and that because a "challenge to a plea proceeding is not the proper subject of Penal Code section 995 motion," he did not forfeit his claim by failing to file such a motion. Docket 15, lodgment 7 at 1 (emphasis deleted).

Beltran also argued that he "could not have requested enforcement of the agreement because there was no enforceable agreement" -- a "plea bargain is ineffective unless and until it is approved by the court." *Id.* at 2-3 (emphasis deleted).

Finally, Beltran argued that "[t]he standard in *Pompa-Ortiz* is not the correct standard by which to measure" prejudice from a court's erroneous

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[3] *People v. Pompa-Ortiz*, 612 P.2d 941 (Cal. 1980).

rejection of a plea bargain. *Id.* at 3. Whereas *Pompa-Ortiz* essentially requires a defendant to show that he received an unfair trial to prove prejudice, when a defendant loses an opportunity to enter a plea, prejudice is measured by the test in *Lafler v. Cooper*, 566 U.S. 156 (2012), and *Missouri v. Frye*, 566 U.S. 134 (2012). *Id.* at 3-4. Beltran explained that these cases "require[d] defendants to demonstrate a reasonable possibility that they would have accepted the earlier plea offer and that, if the prosecution had the discretion to cancel it or if the trial court had the discretion to refuse to accept it, there is a reasonable probability that the prosecutor would have adhered to the agreement and the court would have accepted it." *Id.* at 4. Beltran argued he met that test. *Id.* The remedy was "to reverse appellant's convictions, and allow appellant to enter into the plea bargain which the court arbitrarily rejected as it was administering the advisements." *Id.* at 5.

Respondent argued that Beltran's claim "should be deemed forfeited." Docket 15, lodgment 8 at 2 (footnote omitted).

The Court of Appeal affirmed the judgment in an unpublished memorandum opinion filed on June 13, 2012. Pet. App. 74-94.[4] The court denied Beltran's plea deal claim on the ground that "[t]he trial court never

[4] The court reduced a fine and amended the award of presentence custody credits but otherwise affirmed the judgment. Pet. App. 75, 88-89, 93.

had an opportunity to rule on the propriety of the actions of the magistrate, as defendant failed to make a motion to dismiss under section 995. Under, these circumstances, the issue is forfeited for purposes of direct appeal." Pet. App. 92. The court quoted the holding in *People v. Harris*, 67 Cal.2d 866, 870 (Cal. 1967), "'that the failure to move to set aside the information (Pen. Code, § 995) bars the defense from questioning on appeal any irregularity in the preliminary examination (Pen. Code, § 996).'" *Id.*; *see also id.* (quoting *Harris* for the point that "'section 996 forecloses an attack on the preliminary examination in the absence of a motion under section 995'").[5]

The court said that "[i]n addition to the issue of forfeiture, defendant cannot establish prejudice, as defined by our Supreme Court, from the magistrate's decision not to complete the plea." *Id.* "Defendant suffered no prejudice at trial from the magistrate's decision to terminate the attempt at a guilty plea." *Id.* The court explained that "[w]e have determined that no error, and certainly no prejudicial error, has been shown at trial. The record of post-preliminary hearing proceedings contains no suggestion that defendant expressed any desire to settle his case without a trial, or that he had an actual interest in the earlier offer of 24 years." *Id.* The court

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[5] Penal Code § 996 states that "[i]f the motion to set aside the indictment or information is not made, the defendant is precluded from afterwards taking the objections mentioned in Section 995."

concluded that "[a]ssuming some irregularity occurred at the preliminary hearing -- an issue we need not reach -- we are satisfied that defendant has not shown the irregularity to be jurisdictional." *Id.*

Beltran filed a petition for rehearing on June 29, 2012. Docket 15, lodgment 10. He argued that the court's opinion "established two new rules of law: First, that a claim regarding an irregularity in a plea proceeding may be raised in a section 995 motion, and second that such claim must be raised in a section 995 motion or else it is forfeited." *Id.* at 2. He argued that these new rules "cannot be applied retroactively to appellant without violating due process and fundamental fairness," *id.* at 1 (emphasis and capitalization deleted), and that "[it] is a violation of the state and federal constitution[s] to apply to appellant the new rule of law created in his case." *Id.* at 2. He argued that the court should "deem appellant not to have forfeited this issue, and address appellant's claim of unconstitutional denial of a plea bargain by the arbitrary action of the magistrate." *Id.* at 5. He further argued that the court "failed to apply the applicable standard for prejudice" enunciated in *Lafler* and "instead applied a heretofore nonexistent standard which cannot, consistent with due process, be applied to appellant." *Id.*

The court denied rehearing thirteen days later, on July 12, 2012, without a response being filed by the State. Docket 15, lodgment 11.

Beltran reasserted his plea bargain claim in his petition for review filed in the California Supreme Court on July 26, 2012. Docket 15, lodgment 12. Beltran argued that the magistrate's arbitrary rejection of the plea bargain violated his federal due process rights and his state rights, and he cited five United States Supreme Court opinions in support of his position. *Id.* at 7-12. Beltran complained that "the Court of Appeal did not address the magistrate's arbitrary exercise of authority, but dismissed appellant's claim on novel procedural grounds" that could not be applied against him consistent with due process. *Id.* at 3, 13. He argued that the Court of Appeal's "novel standard for assessing prejudice" was contrary to *Lafler*. *Id.* at 18-19. The court summarily denied review on September 19, 2012. ER 29. Beltran did not file a petition for a writ of certiorari or a state habeas corpus petition. Docket 1 at ECF pages 3, 7.[6]

IV. Federal Habeas

On March 7, 2013, Beltran timely filed a federal habeas petition alleging his plea bargain claim. *Id.* at ECF pages 5, 11-23. In his answer, Respondent contended that the claim was procedurally defaulted. Docket 14

[6] "ECF pages" refers to the page numbers created at the top of filed documents by the district court's electronic filing system.

at ECF pages 7, 12-20. Respondent also argued that the claim failed on the merits. *Id.* at 20. Respondent conceded that "[b]ecause the California Court of Appeal did not reach the issue of whether the magistrate had erred . . . federal habeas review of this issue is de novo. *See Cone v. Bell*, 556 U.S. 449, 472, 129 S. Ct. 1769, 173 L. Ed. 2d 701 (2009)." *Id.* at 20 n.8.

On August 8, 2014, Beltran filed an amended federal petition reasserting his plea bargain claim and adding four other claims that had been exhausted on state direct appeal. Docket 20 at ECF pages 5-6. In his answer to the first amended petition, Respondent repeated his response to the plea bargain claim from his prior answer, including that the state court had not adjudicated the issue of whether the magistrate judge violated Beltran's due process rights by rejecting the plea bargain. Docket 51 at ECF pages 18-30; *see especially* page 26 n.9.

On August 22, 2017, Magistrate Judge Louise A. La Mothe issued a report and recommendation that dispatched with Beltran's due process claim in six sentences. Pet. App. 57-58. Magistrate Judge La Mothe ruled that:

> The United States Supreme Court has never held that a state court must accept a guilty plea. To the contrary, the Supreme Court has said that a defendant does not have the right to have a plea bargain accepted [quoting *Santobello v. New York*, 404 U.S. 257, 261-262 (1971), and *North Carolina v. Alford*, 400 U.S. 25, 38 n.11 (1970), in a footnote]. This Court is sympathetic to Petitioner's criticism of the preliminary hearing judge's abrupt rejection of

> the plea agreement. However, in the absence of clearly established federal law supporting Petitioner's claim, he is not entitled to habeas relief. [Footnote omitted.]
>
> Accordingly, this Court finds that the California courts' denial of Petitioner's claim was neither contrary to, not involved an unreasonable application of, clearly established federal law as determined by the United States Supreme Court. Habeas relief is not warranted on Claim One.

Id. Thus, despite Respondent's statement that the state court had not adjudicated the merits of Beltran's due process claim, and the record confirming that analysis, the magistrate judge ruled that 28 U.S.C. § 2254(d) applied and barred relief. The magistrate judge did not find the claim procedurally defaulted.

On March 6, 2018, District Judge Josephine L. Staton accepted the recommendation and entered judgment against Beltran with prejudice. Pet. App. 45-47. She also denied a COA. Docket 86. Beltran timely appealed. On September 25, 2018, the Ninth Circuit granted a COA on the issue "whether appellant was deprived of due process when the trial court refused to accept appellant's plea, including whether this claim is procedurally defaulted." Pet. App. 43. On August 25, 2020, the Ninth Circuit affirmed the judgment against Beltran, ruling that "[b]ecause there is no constitutional right to having one's plea agreement accepted, Petitioner has failed to present a constitutional issue cognizable for habeas review." Pet. App. 42.

REASONS FOR GRANTING THE WRIT

I. AEDPA Standards

Beltran filed his federal habeas petition after AEDPA's effective date; therefore, his petition is governed by AEDPA. *Woodford v. Garceau*, 538 U.S. 202, 205, 210 (2003). To obtain relief under AEDPA, a petitioner must show that his constitutional rights were violated under 28 U.S.C. § 2254(a) and that § 2254(d) does not bar relief on any claim adjudicated on the merits in state court. *Frantz v. Hazey*, 533 F.3d 724, 735-737 (9th Cir. 2008) (en banc).

Under § 2254(d), a habeas petition challenging a state court judgment:

> shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim–(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The relevant state court decision for purposes of federal review is the last reasoned decision that resolves the claim at issue. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

When a federal court concludes that the state court decision is contrary to or an unreasonable application of federal law, or is based on an unreasonable factual determination, it reviews the claim *de novo* in assessing whether the petitioner's constitutional rights were violated. *Panetti v.*

Quarterman, 551 U.S. 930, 953-954 (2007); *Frantz*, 533 F.3d at 735; *Maxwell v. Roe*, 628 F.3d 486, 506 (9th Cir. 2010).

II. The State Court Did Not Adjudicate the Merits of Beltran's Due Process Claim, and Therefore It Is Reviewed *De Novo*

As Respondent acknowledged in district court, the California Court of Appeal did not adjudicate the merits of Beltran's claim that the trial court's rejection of the plea bargain violated due process, but instead denied the claim as procedurally barred, and therefore federal habeas review of the claim is de novo. *Cone*, 556 U.S. at 460, 467, 472 (state court denial of claim on ground of waiver is not an adjudication on merits; reviewing claim *de novo* in habeas case governed by AEDPA). The magistrate judge wrongly applied § 2254(d) to the claim, wrongly held that it precluded relief, and never reached the merits of Beltran's due process claim. *Woods v. Donald*, 135 S. Ct. 1372, 1378 (2015) (per curiam) (when federal habeas court concludes § 2254(d) bars relief, it expresses no view on merits of underlying constitutional claim).

III. The Trial Court Violated Beltran's Due Process Rights by Arbitrarily Rejecting the Plea Agreement

Section 1 of the Fourteenth Amendment provides that "No State shall . . . deprive any person of life, liberty, or property, without due process of law." The due process clause protects liberty interests that "arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,'" or "from an expectation or interested created by state laws or policies."

Wilkinson v. Austin, 545 U.S. 209, 221 (2005). "The Due Process Clause . . . confers both substantive and procedural rights." *Albright v. Oliver*, 510 U.S. 266, 272 (1994). It requires governments to follow fair procedures before depriving any person of life, liberty, or property. *Mathews v. Eldridge*, 424 U.S. 319, 332-333 (1976). It also "contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (quotation marks omitted).

"The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). "The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). "This requirement of neutrality in adjudicative proceedings . . . preserves both the appearance and reality of fairness." *Id.*; *People v. Ramirez*, 599 P.2d 622, 627 (Cal. 1979) ("freedom from arbitrary adjudicative procedures is a substantive element of one's liberty"); *People v. Segura*, 188 P.3d 649, 655 (Cal. 2008) (trial judges must "remain detached and neutral in evaluating the voluntariness of the plea and the fairness of the bargain to society as well as the defendant"); *see also Williams v. Pennsylvania*, 136 S. Ct. 1899, 1903 (2016) (due process requires recusal of judge "when the likelihood of bias on the part of the judge is too

high to be constitutionally tolerable") (quotation marks omitted); *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (per curiam) (same).

This Court and the California Supreme Courts have emphasized that "criminal justice today is for the most part a system of pleas, not a system of trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Lafler*, 566 U.S. at 170; *Segura*, 188 P.3d at 654-655 (citing similar figures). Thus, plea bargaining "'is not some adjunct to the criminal justice system; it *is* the criminal justice system.'" *Frye*, 566 U.S. at 144 (original emphasis). "Plea agreements benefit that system by promoting speed, economy, and the finality of judgments." *Segura*, 188 P.3d at 654. "The potential to conserve valuable prosecutorial resources and for defendants to admit their crimes and receive more favorable terms at sentencing means that a plea agreement can benefit both parties." *Frye*, 566 U.S. at 144.

A plea agreement requires judicial approval to take effect. *Segura*, 188 P.3d at 655. Although a defendant does not have an "absolute right to have a guilty plea accepted," and courts have discretion to reject a plea, *Santobello*, 404 U.S. at 262, due process requires that courts not "reject pleas on an arbitrary basis." *United States v. Moore*, 916 F.2d 1131, 1136 (6th Cir. 1990). As the Sixth Circuit explained in *Moore*, "[b]y leaving the decision whether to accept or reject a plea to the 'exercise of sound judicial discretion,' *Santobello*,

404 U.S. at 262, 92 S. Ct. at 498, the Supreme Court did not intend to allow district courts to reject pleas on an arbitrary basis. The authority to exercise judicial discretion implies the responsibility to consider all relevant factors and rationally construct a decision." 916 F.2d at 1136; *see also People v. Smith*, 22 Cal. App. 3d 25, 30 (1971) ("Although it is within the discretion of the court to approve or reject the proffered offer, the court may not arbitrarily refuse to consider the offer."); *In re Alvernez*, 830 P.2d 747, 758 (Cal. 1992) ("a trial court's approval of a proposed plea bargain must represent an informed decision in furtherance of the interests of society"; "the trial court may not arbitrarily abdicate that responsibility"); *United States v. Miller*, 722 F.2d 562, 565 (9th Cir. 1983) ("the existence of discretion requires its exercise").

Caselaw cautions that "courts should be wary of second-guessing prosecutorial choices" to make a plea agreement. *Id.*; *Segura*, 188 P.3d at 655 (""The court has no authority to substitute itself as the representative of the People in the negotiation process and under the guise of "plea bargaining" to "agree" to a disposition of the case over prosecutorial objection.""). "Courts do not know which charges are bested initiated at which time"; "which allocation of prosecutorial resources is most efficient"; "or the relative strengths of various cases and charges." *Miller*, 722 F.2d at 565.

"Habeas corpus relief for an asserted violation of due process is

available . . . when the state court's action is arbitrary or fundamentally unfair." *Cooks v. Spalding*, 660 F.2d 738, 739 (9th Cir. 1981). The court's conduct here -- abruptly rejecting the plea agreement, tearing up the plea waiver form, and failing to re-open the colloquy when Beltran reaffirmed he wanted to plead -- was arbitrary, fundamentally unfair, reflected a lack of "neutrality in adjudicative proceedings," and violated Beltran's substantive and procedural due process rights. The Ninth Circuit's conclusion that Belton "has failed to assert a federal constitutional violation" (Pet. App. 41) is flatly wrong in light of these authorities.

The trial court essentially punished Beltran for not understanding the interpreter's translation of the waiver form by depriving him of the opportunity to enter the plea. Although the court purported to reject the plea on the ground that it would not "take a plea from a not guilty man," Beltran did not claim or intimate he was not guilty. He merely responded honestly to the court's question whether he understood what the interpreter read to him by saying that he did not understand everything she read. Beltran's inability to understand the interpreter's entire translation was not a rational reason to reject the plea. The court's rejection of the plea for that reason, or because Beltran's statement that he did understand the entire translation was tantamount to claiming he was not guilty and was unwilling to plead, was arbitrary and capricious. Indeed, this Court has held that "an express

admission of guilt" "is not a constitutional requisite" for the entry of a guilty plea. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970); *id.* at 38 (stating in habeas case that "[i]n view of the strong factual basis for the plea demonstrated by the State and Alford's clearly expressed desire to enter it despite his professed belief in his innocence, we hold that the trial judge did not commit constitutional error in accepting it") (footnote omitted).

Moreover, after the court declared that the offer was "off the table" and told the prosecutor to present her first witness, defense counsel explained that Beltran's only question was with regard to restitution, because he didn't know how he could pay restitution from prison. Counsel said he didn't "want this court to misconstrue his plan. He wants to plead, that's what he had indicated to me." Beltran confirmed on the record that was correct. The court failed to re-open the colloquy and inquire further but instead told the prosecutor to continue with her first witness. The court violated Beltran's due process rights by not re-opening and conducting a proper plea colloquy. *See Henderson v. Morgan*, 426 U.S. 637, 647 (1976) (affirming habeas relief based on inadequate plea colloquy; because petitioner "did not receive adequate notice of the offense to which he pleaded guilty, his plea was involuntary and the judgment of conviction was entered without due process of law").

The court also said that Beltran "has looked extremely reluctant all the way through this entire process." That rationale provides no reasonable basis to reject the plea, because it is refuted by Beltran's repeated on-the-record statements that he wanted to take the plea, his counsel's repeated confirmations of that desire, and the fact that Beltran filled out and submitted the plea waiver form. The court violated Beltran's due process rights by rejecting the plea. *See, e.g., United States v. Maddox*, 48 F.3d 555, 560 (D.C. Cir. 1995) (remanding because of district court's arbitrary summary rejection of renewed plea offer; "where, as here, a defendant offers a timely and reasonable explanation for actions that prompted a district court to reject a guilty plea, the court must at least exercise its discretion to ascertain whether its earlier concerns have been addressed"); *Miller*, 722 F.2d 563 (reversing and remanding; "by categorically rejecting all one-count pleas to multiple count indictments, the district court has abdicated its duty to exercise discretion by considering every case individually"); *In re Morgan*, 506 F.3d 705, 712 (9th Cir. 2007) (similar); *Smith*, 22 Cal. App. 3d at 29, 33 (granting relief on defendant's claim "that the court's refusal to consider his conditional plea was an abuse of discretion and a denial of a substantial right in violation of due process").

In sum, the trial court's abrupt and arbitrary rejhection of the plea deal violated Beltran's right to due process, and the Ninth Circuit's holding that

Beltran fails to even state a cognizable claim in habeas is contrary to law and requires this Court's intervention given the importance of plea bargaining in the criminal justice system.

IV. Beltran Was Prejudiced by the Due Process Violation

The California Court of Appeal denied Beltran's claim for lack of prejudice, and therefore § 2254(d) applies to this part of the claim.

When a state court denies a federal claim subject to harmless error review for lack of prejudice, typically "'a federal court may not award habeas relief under § 2254(d) unless *the harmlessness determination itself* was unreasonable.'" *Ayala*, 135 S. Ct. at 2199 (original emphasis). However, "if 'the state court's harmless error holding is contrary to Supreme Court precedent or objectively unreasonable, then no deference is owed" under § 2254(d). *Cudjo*, 698 F.3d at 768. A "'state court's harmless error holding is "contrary" to precedent if it fails to apply the correct controlling authority.'" *Id.* In that situation, federal habeas courts "revert to the independent harmless error analysis that [they] would apply had there been no state court holding.'" *Id.* at 768.

Here, the California Court of Appeal ruled that Beltran "cannot establish prejudice, as defined by our Supreme Court, from the magistrate's decision not to complete the plea." ER 49. The court explained that Beltran "suffered no prejudice at trial from the magistrate's decision to terminate the

attempt at a guilty plea. We have determined that no error, and certainly no prejudicial error, has been shown at trial." *Id.*

As Beltran showed in his state appeal briefs, however, this is the wrong prejudice standard for his claim. The prejudice caused by a court's erroneous denial of a plea agreement should be measured by the standards set forth by the United States Supreme Court in *Lafler* and *Frye* that apply when defense counsel's ineffectiveness deprives the defendant of the opportunity to enter a plea. In *Lafler*, the Court rejected the prejudice standard suggested by the government that a defendant is not prejudiced if he or she later receives a fair trial, 566 U.S. at 164-170, the standard applied by the Court of Appeal here. The Court explained "here the question is not the fairness or reliability of the trial but the fairness and regularity of the processes that preceded it, which caused the defendant to lose benefits he would have received in the ordinary course" but for the constitutional error. *Id.* at 169. The Court quoted *Frye* for the point that it "'is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process.'" *Id.* at 170. "Far from curing the error, the trial caused the injury from the error. Even if the trial itself is free from constitutional flaw, the defendant who goes to trial instead of taking a more favorable plea may be prejudiced from either a conviction on more serious counts or the imposition of a more severe sentence." *Id.* at 166.

Instead, prejudice from the unconstitutional denial of an opportunity to accept a plea bargain "can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence." *Id.* at 168. The Court explained that "[i]n the context of pleas a defendant must show the outcome of the plea process would have been different" absent the constitutional error. *Id.* at 163.

> In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.

Id. at 164.

There is no reason the prejudice test should be different when the defendant loses a favorable plea opportunity because the trial judge violated his constitutional rights rather than his lawyer. In both instances, a constitutional violation in the pretrial process deprived the defendant of a favorable plea bargain. "AEDPA does not 'require state and federal courts to wait for some nearly identical factual pattern before a legal rule must be applied,'" *Panetti*, 551 U.S. at 953, and a "federal court may grant relief when a state court has misapplied a 'governing legal principle' to 'a set of

facts different from those of the case in which the principle was announced.'" *Wiggins*, 539 U.S. at 520.

Lafler and *Frye* show that the California Court of Appeal's test for prejudice -- requiring the showing of prejudicial constitutional error at the ensuing trial -- is not the correct test in this situation. Because the state court applied a prejudice standard that is contrary to federal law, § 2254(d) is satisfied and the question of prejudice is reviewed *de novo*. *Cudjo*, 698 F.3d at 768 (reviewing question of prejudice de novo because "the California Supreme Court did not apply the *Chapman*[7] harmless error analysis required for constitutional violations").

Beltran satisfies the *Lafler* test. First, Beltran would have accepted -- indeed, he did accept on the record in court -- the offer of 24 years. He also initialed and signed the plea form, and his lawyer urged the court to accept the plea.

Second, the record shows that the prosecutor had accepted the plea.

Third, Judge Marrs initially accepted the terms of the plea and balked only after engaging in the plea colloquy, in violation of Beltran's due process rights. A constitutionally-compliant court would accept the terms of the plea bargain.

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[7] *Chapman v. California*, 386 U.S. 18 (1967).

Fourth, the sentence under the terms of the offer -- 24 years -- was much less severe than the sentence imposed -- 130 years to life. This disparity dwarfs the three and a half time increase in sentence in *Lafler*. *Id.* at 174; *see also United States v. Delegal*, 678 F.2d 47, 52 (7th Cir. 1982) (prejudice from court's wrongful withdrawal of plea agreement shown where defendant "was eventually convicted on two counts, while he had pleaded to only one").

If the Court applies *Brecht*, prejudice is shown for the same reasons. Given the more than five to one disparity between the sentence imposed and the sentence offered, the Court should at least have "grave doubt about whether a trial error of federal law had substantial and injurious effect or influence in determining the jury's verdict." *Ayala*, 135 S. Ct. at 2198 (quotation marks omitted). The State has not met its burden of proving harmlessness. *Id.* at 2197.

The proper remedy here is as in *Lafler*. There the Court explained that "a remedy must 'neutralize the taint' of a constitutional violation." 566 U.S. at 170. *Lafler* held that the correct remedy upon a showing of deficient performance and prejudice in the guilty plea process was "to order the State to reoffer the plea agreement." 566 U.S. at 174. Here, the State should be ordered to reoffer the plea deal for a 24-year sentence.

V. Beltran's Claim Is Not Procedurally Defaulted

In Beltran's state appeal, Respondent did not argue that his plea bargain claim had been forfeited until the Court of Appeal raised the issue in its order for letter briefs. And although the Court of Appeal ruled that the claim was forfeited, the district court did not find the claim procedurally defaulted, but instead denied the claim on the ground that § 2254(d) barred relief. The Ninth Circuit did not reach the question of procedural default but instead denied relief for failure to state a claim. As shown below, Beltran's claim is not procedurally defaulted and the Court can and should reach the merits of his claim.

Procedural default is an affirmative defense. *Gray v. Netherland*, 518 U.S. 152, 165 (1996). "[T]he state must plead, and it follows, prove the default." *Bennett v. Mueller*, 322 F.3d 573, 585 (9th Cir. 2003). Thus, the State carries the burden of establishing the adequacy and independence of the state procedural bar, here, the ruling by the Court of Appeal that Beltran had to move to dismiss the information under Penal Code § 995 in order to preserve a challenge to the court's rejection of the plea agreement. ER 49. The State cannot meet that burden.

"'A state procedural rule constitutes an adequate bar to federal court review if it was "firmly established and regularly followed" at the time it was applied by the state court.'" *Bennett*, 322 F.3d at 583. As Beltran showed in

his state appeal, by its express terms and the published cases interpreting it, Penal Code § 995 is reserved for challenges to irregularities in preliminary examination procedures. *Pompa-Ortiz,* 612 P.2d at 947. A plea proceeding is not a preliminary examination procedure but a manner of resolving a case that may be undertaken at any time prior to sentencing. *People v. West*, 477 P.2d 409, 412-417 (Cal. 1970). Because the plea bargain process is not a part of or tied to the preliminary hearing, it is not the proper subject of a 995 motion, and a defendant need not file a 995 motion to preserve his right to challenge a court's rejection of a plea bargain. Indeed, Beltran noted in his petition for review that "there are no cases in which a section 995 motion was brought to challenge the court's rejection of a plea or any other aspect of a plea proceeding, or in which the Court of Appeal rejected such a challenge on the ground that no section 995 motion had been brought." ER 113. The rules that a claim regarding an irregularity in a plea proceeding (1) may be raised in a § 995 motion and (2) must be raised in a § 995 motion or else it is forfeited were created by the Court of Appeal in Beltran's own case. ER 165.

The two cases cited by the Court of Appeal in its forfeiture analysis do not support its conclusion. In *Harris*, the question was "whether failure to provide counsel at the preliminary examination requires reversal of the ensuing judgment of conviction when the defendant did not move under section 995 of the Penal Code to set aside the information." 434 P.2 at 610.

In *Pendergrass*, the question was whether the defendant forfeited his right to challenge the denial of a motion made at a preliminary hearing to disclose the identity of a confidential informant by not later making a 995 motion. 226 Cal. Rptr. at 853. Neither case involves a challenge to the plea bargaining process, and neither put Beltran on notice to file a 995 motion or else risk forfeiting his claim.

Far from being "firmly established and regularly followed" by the time of Beltran's alleged default, the procedural bar here was imposed for the first time on appeal in Beltran's own case. "Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance on prior decisions, seek vindication in state courts of their federal constitutional rights." *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 447-448 (1958); *see also People v. Welch*, 851 P.2d 802, 808-809 (Cal. 1993) ("[D]efendant should not be penalized for failing to object where existing law overwhelmingly said no such objection was required. It would be unfair to effectively bar any review of defendant's claims where the rule requiring their preservation in the trial court was adopted in the context of her own appeal."); *People v. Stanfill*, 76 Cal. App. 4th 1137, 1151 (1999) (similar).

In sum, the procedural bar imposed by the California Court of Appeal is inconsistent with existing state law at the time of the alleged default, was erroneously and arbitrarily applied to Beltran, and does not preclude federal

merits review. *Sivak v. Hardison*, 658 F.3d 898, 907 (9th Cir. 2011) ("Here, the state court applied the state's procedural rule to Sivak's case in an erroneous and arbitrary fashion. Thus, we follow the Supreme Court and our sister circuits in holding that an erroneously applied procedural rule does not bar federal habeas review.") (footnote omitted); *id.* at 907 n.1 (collecting cases); *Reynolds v. Ellingsworth*, 843 F.2d 712, 719 (3rd Cir. 1988) (state bar inadequate where invocation of bar "is not consistent with other state authority"). Respondent has not met his burden of proving that the forfeiture rule is adequate to preclude federal review on the facts of this case. *Scott v. Schriro*, 567 F.3d 573, 581-582 (9th Cir. 2009).

CONCLUSION

For the foregoing reasons, the Court should grant Beltran's petition, reverse the judgment of the Ninth Circuit, and grant relief.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

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By _____
MARK R. DROZDOWSKI*
Deputy Federal Public Defender
Attorneys for Petitioner
**Counsel of Record*