

No. 20-7190

USCA No. 20-1253

IN THE
SUPREME COURT OF THE UNITED STATES

ERIK SANCHEZ

(Your Name)

— PETITIONER

vs.

TERRY JAQUES

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATE COURT OF APPEALS TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERIK SANCHEZ # 176377 - LCF

(Your Name)

49030 STATE Hwy 71

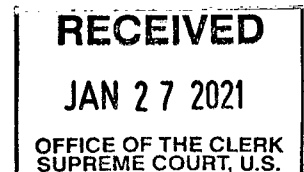
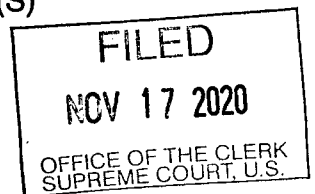
(Address)

LIMON, COLORADO 80826

(City, State, Zip Code)

(Phone Number)

(1)



QUESTION(S) PRESENTED

IN ORDER FOR THE SENTENCING COURT TO DEPART FROM THE CONCURRENT SENTENCES REQUIREMENT IN A.R.S. § 18-1-40B(3) DOES GOVERNMENT MUST ENTER FACTUAL BASIS TO SUPPORT CONSECUTIVE SENTENCES AND DOES DEFENDANT MUST PLEA GUILTY TO SUCH FACTS THE SENTENCING COURT MAKES ESSENTIAL TO THE PUNISHMENT BEFORE THE CONSECUTIVE SENTENCES MAYBE IMPOSED ?

Question of Law Presented to: United States Supreme Court

" MAY DEFENDANT BE REQUIRED TO SERVE AN ADDITIONAL THREE (3) YEARS CONSECUTIVE SENTENCE FOR STATE CRIME OF VEHICULAR ELUDING CONDUCT IN WHICH DEFENDANT HAS NEVER PLEAD GUILTY TO SUCH FACTUAL BASIS DURING THE CRIM. P. rule 11-PROVIDENCY HEARING; FOR CRIMINAL CONDUCT FACTS USED TO DENY POSTCONVICTION RELIEF MOTION CRIM. P. rule 35; TO DENY STATE POSTCONVICTION APPEAL; TO DENY FEDERAL HABEAS CORPUS APPEAL [10TH CIR]; ARE NOT SUPPORTED BY THE TRANSCRIPT RECORD OF THE CRIM. P. rule 11-PROVIDENCY HEARING; CONDUCT DESCRIBED FACTS AS USED ARE INSUFFICIENT EVIDENCE TO PROVE THE ELEMENTS OF VEHICULAR ELUDING; AND SUCH MATERIAL FACTS INDISPUTE USED THE DEFENDANT WAS NOT GIVEN THE CONSTITUTIONAL OPPORTUNITY TO CONTEST OR HAVE THE JURY TRIAL RIGHT ON SUCH FACTS LOWER COURTS USED TO SUPPORT THE CONSECUTIVE SENTENCE DEFENDANT IS SERVING, WHERE SUCH FACTS INDISPUTE ARE FROM POLICE REPORTS WHICH ARE A VAGUE DECLARATIONAL INSUFFICIENT TO PROVE ELEMENTS OF CRIME FOR VEHICULAR ELUDING, DEPRIVED DEFENDANT OF HIS CONFRONTATION AND JURY TRIAL RIGHT GUARANTEEN IN THE SIXTH AMENDMENT AND VIOLATED DEFENDANT'S

Question Presented

DUE PROCESS AND EQUAL PROTECTION OF LAW RIGHT IN THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES; AS LOWER COURTS ARE SUBJECTING THE DEFENDANT TO SERVE AN ADDITIONAL THREE YEARS IN PRISONMENT BASED IN SUCH MATERIAL FACTS IN DISPUTE ABOUT AN ADDITIONAL VEHICULAR ELUDING CRIME TRIAL COURT HAS MADE ESSENTIAL TO THE DEFENDANT'S CONSECUTIVE SENTENCE; WHICH ARE NOT AUTHORIZED BY C.R.S. § 18-1-408(3), COLO. R. STAT. 18-1-408(3); AND DEFENDANT'S FEDERALLY PROTECTED RIGHTS AND LAWS; IS AN UNLAWFUL SENTENCE IN WHICH SHOULD BE CORRECTED AT ANY TIME REGARDLESS OF ANY PROCEDURAL DEFAULT ALLEGED; BECAUSE THE DEFENDANT IS "ACTUALLY INNOCENT" IF SUCH FACTS LOWER COURTS HAVE UNLAWFULLY MADE ESSENTIAL TO HIS CONSECUTIVE SENTENCE; VIOLATED THE PRINCIPLE STANDARD IN BLAKLEY V. WASHINGTON, 542 U.S. AT 303, [DEFINING THE STATUTORY (C.R.S. § 18-1-408(3)) MAXIMUM FOR APPRENDICE V. NEW JERSEY, 530 U.S. AT 490 - PURPOSES AS THE MAXIMUM SENTENCE A JUDGE MAY IMPOSE SOLELY ON THE BASIS OF THE FACTS REFLECTED IN THE JURY VERDICT OR ADMITTED BY THE DEFENDANT.] (Emphasis in original); AS THE DEFENDANT HAS NEVER PLEAD GUILTY NOR HAVE BEEN FOUND GUILTY OF THE MATERIAL FACTS FOR WHICH THE STATE AND FEDERAL COURTS HAVE USED TO JUSTIFY CONSECUTIVE SENTENCE.

Question Presented

imposed; including THE TRIAL COURT used Such FACTS IN its order Denying postconviction relief; WAS THE FIRST TIME Defendant WAS MADE AWARE THAT Such MATERIAL FACTS FROM Police Reports AND Defendant HAD NOT Plead Guilty To Such FACTS AS To Deprive Him OF Due process Notice Before He Filed Crim. P. rule 35 MOTION; CAUSED THE PROCEDURAL DEFAULT OF NOT preserving FederALLY Protected rights violation claims; WHEN Such FACTS Were NOT Supported By THE Crim. P. rule 11 Hearing Transcripts Defendant relied upon WHEN drafted POSTCONVICTION MOTION; UNLAWFULLY SHIFTING THE Preservation Burden ON Defendant WHEN it WAS THE TRIAL COURT THAT Failed To require For THE STATE TO ENTER THE FACTUAL BASIS evidence OF CRIMINAL CONDUCT WHICH SATISFIED THE elements FOR the crime of vehicular eluding; and For THE FACTS it would later use to Impose consecutive Sentences; and THE FACTS used To Deny post-CONVICTION relief; IS THE exception to Federal STATUTE 28 U.S.C. § 2254 (b)(1)(A) requirement ON EXHAUSTION OF STATE COURT Remedies [Abuse of Writ]; AND HAS Deprived Defendant OF His FederALLY protected rights as evidence entered For FACTUAL BASIS During crim. P. rule 11 - providence Hearing requires Concurrent Sentence According To

Question Presented

STATE LAW; COLORADO REVISED STATUTE § 18-1-408(3)
and JUHL v. PEOPLE, 172 P. 3d 896 (Colo. 2007) ?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

THE PEOPLE OF THE STATE OF COLORADO
respondents

RELATED CASES

BLAKLEY v. WASHINGTON, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed 2d 403 (2004)

APPENDI v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed 2d 435 (2000)

YUHL v. People, 172 P. 3d 896, 899 (Colo. 2007)

Lopez v. People, 113 P. 3d 713, 716 (Colo. 2005)

Rice v. People, 193 Colo. 270, 565 P. 2d 940 (1977)

Boykin v. ALABAMA, 395 U.S. 238, 242; 89 S. Ct. 1789; 23 L. Ed 2d 274 (1969)

UNITED STATES v. Booker, 543 U.S. 220; 125 S. Ct. 738; 160 L. Ed 2d 621 (2005)

UNITED STATES v. WOLFE, 435 F. 3d 1289 (10th Cir 2006)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES PAGE (s)

APPENDIX A	- - - - -	R1 - R2
APPENDIX B	- - - - -	R3 - R85
APPENDIX C	- - - - -	R86 - R172
APPENDIX D	- - - - -	R173 - R243
APPENDIX E	- - - - -	R244 - 259
APPENDIX F		

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Blakely v. Washington	542 U.S. 296	14, 23, 27, 32-34
Appendix v. New Jersey	530 U.S. 466	14, 23, 27, 32, 34
Murray v. Carrier	477 U.S. 478	17, 32, 41
Juhl v. People	172 P. 3d 896	15, 20, 24
People v. Cisneros	665 P. 2d 145	25
Harshfield v. People	697 P. 2d 391	25
People v. Reyes	728 P. 2d 349	25
Lewis v. Casey	518 U.S. 343	36

STATUTES AND RULES

Colo. Crim. P. Rule - 11	13, 18, 20, 21, 24, 25, 27, 31, 33
Fed. Crim. P. Rule - 11	25
§ 18-1-408 (3) C.R.S.	15, 16, 20, 23-25, 31
28 U.S.C. § 2254 (b)(1)(A)	17, 29, 32
28 U.S.C. § 2253 (c)(2)	17, 18
Colo. Crim. P. Rule 35 (a)	17, 27

OTHER Erickson v. Pardus	551 U.S. 89	41
Vreeland v. Schwartz	613 F. App'x 679	36
Hall v. Cortez	896 F. Supp. 1043	40
Haines v. Kerner	404 U.S. 519	520-21, 40-41

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCTOBER 21, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: NEVER RULED ON, and a copy of the order denying rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including APPENDIX - A (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was JAN. 31, 2019.
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VIOLATION OF FIRST AMENDMENT, right to PETITION THE COURTS FOR REDRESS OF GRIEVANCES GUARANTEED IN THE CONSTITUTION OF THE UNITED STATES FOR FAILURE TO ADDRESS FEDERAL CONSTITUTIONAL CLAIMS AND ADJUDICATE CLAIMS ON THE MERITS BY ALL STATE AND FEDERAL PREVIOUS COURTS; SIXTH AMENDMENT right VIOLATION IN THE right TO OBJECT, CONTEST, HAVE A JURY TRIAL ON ALL MATERIAL FACTS BEFORE ANY COURT OF LAW MAY MAKE SUCH MATERIAL FACTS ESSENTIAL TO THE PETITIONER'S PUNISHMENT/CONSECUTIVE SENTENCES IS GUARANTEED IN THE CONSTITUTION OF THE UNITED STATES; AND A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF LAW right - AS VIOLATION OF STATE COURT RULES, (rule 11), STATE SENTENCING STATUTE, and VIOLATION OF FEDERALLY PROTECTED RIGHTS, IN ORDER TO JUSTIFY UNLAWFUL SENTENCE - VIOLATED PETITIONER'S FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

STATEMENT OF THE CASE

Trial Court, STATE COURT OF APPEALS, Federal Court (10TH CIR) OF APPEALS, HAVE USED MATERIAL FACTS INDISPUTE TO DENY POSTCONVICTION RELIEF, POSTCONVICTION STATE APPEAL, and TO DENY FEDERAL HABEAS CORPUS proceedings, IN FACTS ABOUT AN ADDITIONAL VEHICULAR ELUDING CRIME NOT SUPPORTED BY THE CALIF. P. RULE 11 - PROVIDENCY HEARING RECORD (TRANSCRIPTS), DEPRIVED PETITIONER - SANCHEZ OF HIS FEDERALLY PROTECTED RIGHTS, INCLUDING THE RIGHT TO A JURY TRIAL ON FACTS WHICH INCREASE HIS SENTENCE and TRIAL COURT IS MAKING SUCH FACTS ESSENTIAL TO HIS PUNISHMENT. SUCH MATERIAL FACTS ARE UNLAWFULLY and UNCONSTITUTIONALLY BEEN MADE ESSENTIAL TO THE PETITIONER'S SENTENCE ALSO VIOLATES THE PETITIONER'S DUE PROCESS and EQUAL PROTECTION OF LAW RIGHT GUARANTEED IN THE SIXTH and FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES. ANY MATERIAL FACTS WHICH ARE ESSENTIAL TO PETITIONER'S PUNISHMENT HE MUST PLEA GUILTY TO SUCH FACTS.

REASONS FOR GRANTING THE PETITION

UNITED STATES COURT OF APPEALS ERRONEOUSLY CONCLUDED THAT PETITIONER FAILED TO MEET THE BURDEN TO OBTAIN A COA. THE STANDARD REQUIRED BECAUSE THE STATE ADJUDICATED SANCHEZ'S CLAIMS ON THE MERITS, SANCHEZ CAN OBTAIN A COA ONLY IF REASONABLE JURISTS COULD DEBATE WHETHER THE STATE ADJUDICATION WAS CONTRARY TO CLEAR ESTABLISHED FEDERAL LAW OR WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS. SEE (APPENDIX - B PAGES R67-69 and PAGES R72 - THRU R74) FIRST, APPELLANT - SANCHEZ RAISED A *Blakely v. WASHINGTON*, 542 U.S. 296 (2004) and *Apprendi v. New Jersey*, 530 U.S. 466 (2000) ARGUMENT, THAT C.R.S. § 18-1-408 (3) IS THE STATUTORY MAXIMUM UNDER THE ONLY FACTUAL BASIS ENTERED AT THE CRIM. P. rule 11 - PROVIDENCY HEARING. "ALTHOUGH THE TRIAL COURT STATED DURING THE PROVIDENCY HEARING THAT THE FACTUAL BASIS WAS ACCEPTED FOR THE F4 [THE ATTEMPTED FIRST DEGREE ASSAULT COUNT] AND DID NOT EXPRESSLY REFER TO

REASONS FOR GRANTING PETITION

THE VEHICULAR ELUDING COUNT, THE FACTUAL BASIS provided FOR THE ATTEMPTED ASSAULT COUNT IN FACT provided A FACTUAL BASIS FOR BOTH COUNTS: see (USCA 10TH CIRCUIT ORDER APPENDIX-B PAGE - 869.) PETITIONER - Sanchez asserts THAT under THOSE FACTUAL BASIS entered INTO EVIDENCE and MATERIAL FACTS FOR WHICH He Plead Guilty, C.R.S. § 18-1-408 (3) Applies Because BOTH COUNTS ARISED FROM THE SINGLE ACT OF MR. SANCHEZ REVERSING HIS VEHICLE TOWARDS POLICE IN ORDER TO BEGIN THE VEHICULAR ELUDING CRIME, He ALSO COMMITTED THE ATTEMPTED FIRST DEGREE ASSAULT COUNT; and ACCORDING TO JUHL V. PEOPLE, 172 P. 3d 896, 899-901 (COLO. 2007) IT DEPRIVED THE SENTENCING COURT OF THE DISCRETION TO SENTENCE MR. SANCHEZ TO NO OTHER THAN CONCURRENT SENTENCES ON BOTH COUNTS AS REQUIRED BY § 18-1-408 (3) C.R.S.; TRIAL COURT'S ORDER TO RUN BOTH COUNTS CONSECUTIVE VIOLATED STATE LAWS and VIOLATED THE PETITIONER'S DUE PROCESS and equal protection OF THE LAW GUARANTEED IN THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES - INSTEAD OF GRANTING POSTCONVICTION RELIEF ON THIS ISSUE THE TRIAL COURT USED MATERIAL FACTS INDISPUTE, IN WHICH WERE NOT SUPPORTED

REASONS FOR GRANTING PETITION

By THE RECORD OF THE CALIF. P. rule 11 -
providency Hearing Nor Had petitioner Plead
Guilty to Such FACTS ABOUT AN ADDITIONAL
vehicular Eluding crime prior to THE TACO
BELL Incident entered INTO EVIDENCE AS
FACTUAL BASIS TO DENY POSTCONVICTION RELIEF
AND Such FACTS appear IN record FOR THE
FIRST TIME ON trial Court's order Denying
POSTCONVICTION RELIEF; WAS A LEGAL AMBUSH
BECAUSE AMONG OTHER THINGS - PETITIONER WAS
Surprised and UNABLE to CONTEST, OBJECT,
CONFRONT HIS ACCUSERS, Nor HAVE A jury TRIAL
ON Such FACTS THE TRIAL COURT UNLAWFULLY
made essential to His PUNISHMENT, THE
Consecutive Sentences IN VIOLATION OF C.R.S.
§ 18-1-408 (3); Deprived PETITIONER OF HIS
SIXTH Amendment to THE CONSTITUTION; and
Deprived PETITIONER OF His Due process and
equal protection OF THE LAW right GUARANTEED
IN THE Fourteenth Amendment to THE
CONSTITUTION OF THE UNITED STATES. APPELLANT
IS "ACTUALLY INNOCENT" OF THE ADDITIONAL
ACCUSATIONS ALL STATE AND Federal Courts
Are UNLAWFULLY and UNCONSTITUTIONALLY HAVE
MADE Such FACTS essential to PETITIONER'S
Consecutive Sentence PUNISHMENT; BECAUSE

REASONS FOR GRANTING PETITION

HE HAS NOT PLEAD GUILTY TO SUCH FACTS ABOUT AN ADDITIONAL VEHICULAR ELUDING CRIME BEFORE THE TACO BELL INCIDENT; NOR HAS A JURY FOUND MR. SANCHEZ GUILTY OF SUCH FACTS; IS ANOTHER EXCEPTION TO THE FEDERAL STATUTE 28 U.S.C. § 2254 (b)(1)(A) REQUIREMENT. See MURRAY v. CARREERE, 477 U.S. 478, 496; 91 L. ED 2d 397, 106 S. CT. 2639 (1986) See (APPENDIX - B PAGES R54-60 AND PAGES R62-64)

PETITIONER ARGUED THAT BECAUSE NO LOWER COURT HAS RULED ON THE MERITS OF HIS FEDERAL CONSTITUTIONAL CLAIMS, AND STILL HAVE NOT ADDRESSED PETITIONER'S SIXTH AMENDMENT CLAIM WHERE TRIAL COURT USED SUCH FACTS FOR THE FIRST TIME ON ITS ORDER (APPENDIX - C) DENYING POSTCONVICTION RELIEF - COLO. CRIM. P. RULE 35 (c)(3)(vi) UNDER "NEWLY DISCOVERED EVIDENCE" PETITIONER MAYBE ENTITLED TO A SECOND ROUND OF STATE AND FEDERAL APPEALS TO ADDRESS MR. SANCHEZ'S SIXTH AND FOURTEENTH AMENDMENT VIOLATIONS TO THE CONSTITUTION OF THE UNITED STATES; AS UNDER 28 U.S.C. § 2253 (c)(2) PETITIONER MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT. HOWEVER, NO LOWER STATE NOR FEDERAL COURTS HAS ADDRESSED THE

REASONS FOR GRANTING PETITION

FEDERAL CONSTITUTIONAL CLAIMS PETITIONER RAISED. THE LOWER FEDERAL COURT OF APPEALS (WITH CIR) DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE UNITED STATES CONSTITUTION, INCLUDING THE SIXTH AND FOURTEENTH AMENDMENTS; 28 U.S.C. § 2253 (c)(2); WHEN IT DENIED THE PETITIONER A CERTIFICATE OF APPEALABILITY WITHOUT ADDRESSING NOR ADJUDICATING THE FEDERAL CONSTITUTIONAL CLAIMS RAISED IN HIS FEDERAL HABEAS CORPUS APPEAL. SPECIFICALLY, THE FEDERAL COURT OF APPEALS (WITH CIR) FAILED TO RULE ON PETITIONER'S ARGUMENT THAT SUCH FACTS ABOUT AN ADDITIONAL VEHICULAR ELUDING CRIME USED BY TRIAL COURT FOR THE FIRST TIME IN ITS ORDER DENYING POSTCONVICTION RELIEF; and COLORADO COURT OF APPEALS USING SUCH FACTS TO DENY POSTCONVICTION APPEAL - NOT ONLY DEPRIVED THE PETITIONER OF HIS RIGHT TO CONTEST, OBJECT, and HAVE DUE PROCESS NOTICE THAT TRIAL COURT WOULD MAKE SUCH FACTS ESSENTIAL TO HIS PUNISHMENT / CONSECUTIVE SENTENCES [VIOLATED CRIM. P. rule 11] VIOLATED APPELLANT'S DUE PROCESS and EQUAL PROTECTION OF LAW GUARANTEED TO MR. SANCHEZ IN THE FOURTEENTH AMENDMENT; BUT ALSO VIOLATED PETITIONER'S RIGHT TO A JURY TRIAL ON SUCH FACTS GUARANTEED IN THE SIXTH

REASONS FOR GRANTING PETITION AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Federal Court of Appeals (10th circuit) did unlawfully determine that there was no error in the Colorado Court of Appeals' factual findings that supported its holdings; ruling that in sum, reasonable jurists couldn't debate whether the state court's adjudication was contrary to clearly established federal law [without addressing Blazely and Appendix Supra claims] or was based on an unreasonable determination of the facts, [while using such facts about an additional vehicular eluding crime petitioner had not plead courtesy to nor record supported] see Cordere Denying COA Appendix-B Pages R73-74) Furthermore, under the factual basis established for the attempted assault charge at the providency plea-hearing for the attempted assault charge in fact provided a factual basis for both counts; evidence entered was the facts recounting Sanchez's ramming his car into the officer's SUV and his eluding after this ramming to begin his vehicular eluding crime. Under those facts entered at the providency hearing the

REASONS FOR GRANTING PETITION

EVIDENCE IS IDENTICAL FOR BOTH COUNTS WHICH TRIGGERED THE C.R.S. § 18-1-408 (3) REQUIREMENT DEPRIVING THE SENTENCING COURT OF THE DISCRETION TO SENTENCE PETITIONER TO NO OTHER THAN CONCURRENT SENTENCES ACCORDING TO Juhl v. People, 172 P. 3d 896, 899-901 (Colo. 2007)

THE FEDERAL COURT OF APPEALS (10TH CIRCUIT) BASED ITS DECISION AND ADJUDICATION; AS THE COLORADO COURT OF APPEALS; ON AN UNREASONABLE DETERMINATION OF THE FACTS; HAVING CONSIDERED AN ELUDING CRIME ALLEGED OCCURRED BEFORE THE TACO BELL INCIDENT THE TRANSCRIPT OF THE RULE-11 PROVIDENCE HEARING DOES NOT SUPPORT - RELYING ON MATERIAL FACTS MR. SANCHEZ DID NOT PLEA GUILTY TO IS UNLAWFUL; DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW AND THE FEDERAL PROTECTED RIGHTS OF MR. SANCHEZ REQUESTING A REMAND. THE FACTUAL BASIS FOR THE PROVIDENCE HEARING IS AS FOLLOWS:

A FACTUAL BASIS TO THE F4 PLEA

ON JUNE 10TH JUST AFTER MIDNIGHT;
MR SANCHEZ, YOU WERE OPERATING A MOTOR VEHICLE,
THERE WAS A CHASE,
AT SOME POINT YOU WERE CORRALLED BEHIND A TACO BELL.

OFFICERS GOT OUT OF THE CAR, YOU BACK UP TOWARDS

REASONS FOR GRANTING PETITION.

THEM, HIT THE CAR, BACKED UP AGAIN, HIT THE CAR AGAIN. THEY GOT OUT OF HARM'S WAY AND YOU DROVE AWAY.

THE FACTUAL BASIS TO THE F4 IS ACCEPTED.

NO FACTUAL BASIS WAS ESTABLISHED FOR THE VEHICULAR ELUDING COUNT. THE TENTH CIRCUIT FEDERAL COURT OF APPEALS CONCLUSION OF AN ADDITIONAL VEHICULAR ELUDING CRIME BEFORE THE TACO BELL INCIDENT WHICH WAS NOT ENTERED INTO EVIDENCE DURING THE CRM. P. rule 11 - PROVIDENCY PLEA - HEARING IS AN UNREASONABLE DETERMINATION OF THE FACTS BECAUSE THE TRANSCRIPT RECORD OF THE PROVIDENCY - PLEA HEARING DOES NOT SUPPORT SUCH FACTS AND PETITIONER HAD NOT PLEA CONSENT TO SUCH FACTS AS TO BE MADE ESSENTIAL TO PETITIONER'S PUNISHMENT / CONSECUTIVE SENTENCES; AND HABEAS CORPUS APPEAL PROCEEDINGS. SEE (APPENDIX - B PAGES R67 - 74) THE LOWER COURTS, INCLUDING THE TENTH CIRCUIT FEDERAL COURT OF APPEALS HAVE RULED THAT, "WHILE THE ATTEMPTED FIRST DEGREE ASSAULT CONVICTION WAS BASED ON SANCHEZ'S ACT OF DRIVING HIS CAR INTO THE OFFICERS' VEHICLE", THE VEHICULAR - ELUDING CONVICTION "WAS BASED ON THE CHASE THAT OCCURRED BEFORE THE ATTEMPTED ASSAULT AND

REASONS FOR GRANTING PETITION

THE CHASE THAT OCCURRED WHEN GANCHEZ DROVE AWAY FROM THE SCENE IN HIS CAR AFTER THE ATTEMPTED ASSAULT," See (Order Denying COA Appendix - B PAGES R69 - 74) THE TENTH CIRCUIT FEDERAL COURT OF APPEALS REFUSE TO CONSIDER PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS ; especially HIS SIXTH AMENDMENT right VIOLATION RAISED AS PETITIONER NEVER PLEAD GUILTY TO SUCH FACTS ABOUT A PRIOR VEHICULAR ELUDING CRIME BEFORE THE TACO BELL INCIDENT WHICH THE RECORD OF THE CRIM. P. rule 11 - PROVIDENCY PLEA HEARING DOES NOT SUPPORT ; THE TRIAL COURT USED SUCH FACTS IN ORDER DENYING POSTCONVICTION RELIEF ; COLORADO COURT OF APPEALS USED SUCH FACTS TO DENY POSTCONVICTION APPEAL and TENTH CIRCUIT FEDERAL COURT OF APPEALS USED SUCH FACTS TO DENY HABEAS CORPUS APPEAL SEEKING COA ; VIOLATED PETITIONER'S DUE PROCESS AND EQUAL PROTECTION OF THE LAW GUARANTEED TO HIM IN THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES ; BECAUSE PETITIONER WAS NEVER GIVEN THE OPPORTUNITY TO OBJECT , CONTEST , FACE HIS ACCUSERS IN COURT , and HE WAS DEPRIVED OF HIS RIGHT TO JURY TRIAL OF SUCH FACTS WHICH ARE ESSENTIAL TO HIS

REASONS FOR GRANTING PETITION

PUNISHMENT / CONSECUTIVE SENTENCES WHICH IS PETITIONER'S SIXTH AMENDMENT RIGHT GUARANTEED IN THE CONSTITUTION OF THE UNITED STATES. see *Blakely v. Washington*, 542 U.S. AT 303 and *Apprendi v. New Jersey*, 530 U.S. AT 490, FOR THE PURPOSE AS MAXIMUM SENTENCE A JUDGE MAY IMPOSE SOLELY ON THE BASIS OF THE FACTS REFLECTED IN THE JURY VERDICT OR ADMITTED BY THE DEFENDANT.

ISSUE ONE

TRIAL COURT VIOLATED PETITIONER'S SIXTH AMENDMENT RIGHT BY MAKING MATERIAL FACTS ESSENTIAL TO PETITIONER'S CONSECUTIVE SENTENCES ALSO VIOLATED C.R.S. § 18-1-408(3) WHICH DEPRIVED PETITIONER OF HIS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW GUARANTEED IN THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

TRIAL COURT SENTENCE PETITIONER TO SIX YEARS FOR THE ATTEMPTED ASSAULT COUNT AND THREE YEARS FOR THE VEHICULAR ELUDING COUNT; AND THEN ORDERED FOR BOTH COUNTS TO RUN CONSECUTIVE TO EACH OTHER FOR A TOTAL OF NINE YEARS. PETITIONER HAS COMPLETED HIS

ISSUE ONE

SIX YEAR SENTENCE ENTITLING HIM TO IMMEDIATE RELEASE IF A HABEAS CORPUS ORDER IS ISSUED BY THIS HONORABLE COURT.

SIXTH AMENDMENT CLAIM : UNDER FACTUAL BASIS ENTERED DURING THE CRIM. P. RULE 11 - PROVIDENCY HEARING [APPENDIX - B PAGE R68] AND C.R.S. § 18-1-408(3), THE TRIAL COURT WAS REQUESTED TO IMPOSE CONCURRENT SENTENCES ON BOTH COUNTS. SEE, JUHL V. PEOPLE, 172 P. 3D 896 (COL. 2007) THE FACTS ENTERED DURING THE PROVIDENCY HEARING IS THAT IN A SINGLE ACT MR. SANCHEZ REVERSED HIS CAR TO BEGIN A VEHICULAR ELUDING CRIME AND AT THE SAME TIME COMMITTED THE ATTEMPTED ASSAULT CRIME WHEN HE REVERSED HIS VEHICLE TOWARDS THE POLICE OFFICERS WHICH WERE CONDUCTING A TRAFFIC STOP.

UNDER THOSE FACTS FOR WHICH PETITIONER PLEAD GUILTY AND WAIVED HIS FEDERAL PROTECTED RIGHTS DURING THE CRIM. P. RULE 11 - PROVIDENCY HEARING "PLEA COLLOQUE", SPECIFICALLY THE RIGHT TO OBJECT, CONFRONT, AND HAVE A JURY TRIAL ON ALL FACTS ESSENTIAL TO HIS PUNISHMENT; PETITIONER FILED HIS POSTCONVICTION MOTION PURSUANT TO CRIM. P. RULE 35 (a) TO CORRECT AN ILLEGAL SENTENCE. SEE [APPENDIX - E PAGES R244 - 255] PETITIONER CLAIMED THAT VIOLATION

ISSUE ONE

OF C.R.S. § 18-1-408 (3) ALSO VIOLATED HIS
FOURTEENTH AMENDMENT TO THE CONSTITUTION OF
THE UNITED STATES, SEE [APPENDIX-E PAGE
R253] ACCORDING TO THE FACTUAL BASIS ENTERED
DURING THE CRIM. P. rule 11- PROVIDENCY -
HEARING THE EVIDENCE ENTERED DESCRIBED
CRIMINAL CONDUCT TO SATISFY THE ELEMENTS
FOR BOTH COUNTS AND IN FACT THE COLORADO
COURT OF APPEALS AND THE 10TH CIRCUIT UNITED
STATES COURT OF APPEALS HAVE BOTH AGREED
WITH PETITIONER THAT THE FACTUAL BASIS ENTERED
FOR THE ATTEMPTED ASSAULT COUNT, ALSO DID
PROVIDE FACTUAL BASIS FOR THE VEHICULAR
ELUDING COUNT. SEE [APPENDIX-D PAGE R242
AND APPENDIX-B PAGE R69] SEE ALSO, Fed. P.
rule 11 - People v. Cisneros, 665 P.2d 145 (Colo.
APP. 1983), Harshfield v. People, 697 P.2d 391
(Colo. 1985), People v. Reyes, 728 P.2d 349 (Colo.
App. 1986)

THERE WAS NO WAY PETITIONER WOULD IMAGINE
THAT TRIAL COURT WOULD USE MATERIAL FACTS NOT
SUPPORTED BY THE TRANSCRIPT RECORD OF THE
CRIM. P. rule 11- PROVIDENCY HEARING AND THE
PETITIONER HAD NOT PLEAD GUILTY TO SUCH FACTS,
BEFORE FILING HIS CRIM. P. rule 35 (a) POST-
CONVICTION MOTION. TRIAL COURT USED MATERIAL

ISSUE ONE

FACTS INDISPUTE WHICH PETITIONER HAD NOT Plead GUILTY TO SUCH FACTS FOR THE FIRST TIME IN ITS ORDER DENYING POSTCONVICTION RELIEF. See [APPENDIX - E PAGES R256-259] THE MATERIAL FACTS INDISPUTE INCLUDE A VEHICULAR ELUDING CRIME BEFORE THE TACO BELL INCIDENT. THE PETITIONER ASSERTED IN HIS OPENING BRIEF TO THE COLORADO COURT OF APPEALS THAT THE USE OF SUCH FACTS TO JUSTIFY THE ILLEGAL SENTENCE TRIAL COURT IMPOSED VIOLATED THE PETITIONER'S SIXTH AMENDMENT RIGHT TO OBJECT, CONFRONT, AND HAVE A JURY TRIAL IN ALL MATERIAL FACTS THE TRIAL COURT MAKES ESSENTIAL TO HIS PUNISHMENT AND SENTENCE. See [APPENDIX - D PAGES R181, R193-R199] IN THE PEOPLE'S RESPONSE BRIEF THE GOVERNMENT'S ATTORNEY FAILED TO CONCLUSIVELY REFUTE PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS. See [APPENDIX - D PAGES R203-R216] IN FACT, THE PEOPLE'S RESPONSE BRIEF WAS SO FAR OFF SUBJECT IT WAS LEGALLY INSUFFICIENT TO BE CONSIDERED BY PETITIONER AND HE HAD TO RETURN THE COURT OF APPEALS TO THE SUBJECT OF HIS FEDERAL CONSTITUTIONAL CLAIMS WHEN HE FILED HIS REPLY BRIEF.

FURTHERMORE, IN PETITIONER'S REPLY BRIEF HE REASSERTED THAT THERE WAS NO WAY THE

ISSUE ONE

PETITIONER COULD HAVE ANTICIPATED THE FACT THAT TRIAL COURT WOULD USE SUCH FACT TO DENY POST CONVICTION RELIEF NOT ENTERED INTO EVIDENCE IN THE CRIM. P. rule 11 PLEA ADVISEMENT TO HAVE NEEDED TO PRESERVE SUCH A ISSUE FOR APPEAL WHEN FILED HIS CRIM. P. rule 35 (a) POSTCONVICTION MOTION AND TRIAL COURT USING SUCH FACTS PETITIONER HAD NOT PLEAD GUILTY TO THE MATERIAL FACTS TRIAL COURT WAS UNCONSTITUTIONALLY MAKING ESSENTIAL TO PETITIONER'S CONSECUTIVE SENTENCE AND PUNISHMENT ALSO VIOLATED THE UNITED STATES SUPREME COURT MANDATE IN BLAKEY VS. WASHINGTON, 542 U.S. 296 (2004) AND APPENDI VS. NEW JERSEY, 530 U.S. 466 (2000) [appendix - > PAGES R221, R225 - 235]

THE COLORADO COURT OF APPEALS REFUSE TO ADDRESS ANY OF PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS INCLUDING THE FAILURE TO CONSIDER THIS HONORABLE COURT'S RULING IN BLAKEY OR APPENDI - SUPRA ID. - THE STATE COURT OF APPEALS DENIED POSTCONVICTION APPEAL BASED ON THE VERY FACTS ABOUT AN ADDITIONAL VEHICULAR ELUDING CRIME ALLEGED OCCURED BEFORE THE TACO BELL INCIDENT, MATERIAL FACTS PETITIONER HAD NOT PLEAD GUILTY FOR COURT OF APPEAL TO MAKE SUCH FACTS ESSENTIAL TO PETITIONER'S PUNISH -

ISSUE ONE

MENT Deprived Him of His Sixth Amendment Right to Object, Confront, and Be Found Guilty in a Jury Trial of any facts the Court of Appeal has made essential to the Petitioner's Sentence in order to Deny the Postconviction Appeal; as guaranteed in the Constitution of the United States. See [Appendix - D Pages R237 - 243] The State Court of Appeals Failure to Address Petitioner's Federal Constitutional Claims also Deprived Him of His First Amendment right to Petition the Court for redress of Grievances, in the Constitution of the United States. See [Appendix - D Pages R239 - 240]

PETITIONER Filed His timely Petition For Writ of Habeas Corpus in the United States District Court for the District of Colorado under 28 USC § 2254; reasserting the Deprivation of His Federally Protected Constitutional rights, Specifically the Federal Sixth Amendment Constitutional right violation. See [Appendix - C Pages R92 - R94] Petitioner replied to respondent's Pre-Answer to Petition For Writ of Habeas Corpus, asserted the Federal Constitutional Claims the respondent's Failed to Address, reclaiming that the use of such facts by Trial Court and the Colorado

ISSUE ONE

COURT OF APPEALS ABOUT AN ADDITIONAL VEHICULAR ELUDING CRIME PETITIONER HAD NOT PLEAD GUILTY TOO NOR DOES THE RECORD ON APPEAL SUPPORT VIOLATED HIS FEDERALLY PROTECTED RIGHTS. SEE [APPENDIX - C PAGES R103 - R113] AND THAT HIS FEDERAL CONSTITUTIONAL CLAIMS ARE NOT PROCEDURALLY BARRED FOR PETITIONER'S FAILURE TO PRESERVE FEDERAL CONSTITUTIONAL CLAIMS, WHEN IT WAS TRIAL COURT WHO HAD CAUSED THE PROCEDURAL DEFAULT BY USING SUCH FACTS TO DENY POSTCONVICTION RELIEF AND COLORADO COURT OF APPEALS USING SUCH FACTS TO DENY POSTCONVICTION APPEAL - UNITED STATES MAGISTRATE JUDGE'S RECOMMENDED THAT THE APPLICATION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 BE DENIED AND THE ACTION BE DISMISSED BECAUSE PETITIONER'S CLAIMS WERE PROCEDURALLY BARRED. SEE [APPENDIX - C PAGE R165] HOWEVER, THE UNITED STATES MAGISTRATE JUDGE'S RECOMMENDATION ALSO CONCLUSIVELY FAILED TO ADDRESS PETITIONER'S FEDERAL CONSTITUTIONAL CLAIMS, ESPECIALLY HIS CLAIM THAT TRIAL COURT USE OF SUCH FACTS ABOUT AN ADDITIONAL VEHICULAR ELUDING CRIME THE PETITIONER HAD NOT PLEAD GUILTY TOO, MAKING SUCH FACTS ESSENTIAL TO HIS SENTENCE - TO DENY

ISSUE ONE

POSTCONVICTION RELIEF, and COLORADO COURT OF APPEALS USING SUCH FACTS TO DENY POSTCONVICTION APPEAL, DEPRIVED PETITIONER OF HIS FIRST AMENDMENT RIGHT TO PETITION THE COURT FOR REDRESS OF GRIEVANCES; HIS SIXTH AMENDMENT RIGHT TO HAVE A JURY TRIAL ON SUCH FACTS ANY COURT MAKES ESSENTIAL TO HIS PUNISHMENT; and especially DEPRIVED PETITIONER OF HIS DUE PROCESS AND EQUAL PROTECTION OF LAW RIGHT GUARANTEED IN THE FOURTEENTH AMENDMENT RIGHT TO THE CONSTITUTION OF THE UNITED STATES, SEE [APPENDIX - C PAGES R156-166]

PETITIONER FILED HIS OBJECTIONS TO RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE, CLAIMING PETITIONER HAS EXHAUSTED ALL HIS STATE REMEDIES AND HABEAS CORPUS PROCEEDINGS WERE NOT PROCEDURALLY BARRED AND REASSERTED THE FEDERAL CONSTITUTIONAL CLAIM ABOUT SUCH FACTS THAT WERE USED TO DENY POSTCONVICTION RELIEF and used to DENY POSTCONVICTION APPEAL WHICH PETITIONER WAS NOT GIVEN THE RIGHT TO CONTEST, OBJECT, NOR HAVE A SIXTH AMENDMENT RIGHT TO A JURY TRIAL ON SUCH FACTS MADE ESSENTIAL TO HIS PUNISHMENT. SEE [APPENDIX - C PAGES R128 - R144] UNITED STATES DISTRICT COURT DENIED AND DISMISSED ACTION BECAUSE THE

ISSUE ONE

PETITIONER'S CLAIMS WERE PROCEDURALLY BARRED.
See [Appendix-C Pages R167-168]

PETITIONER FILED A RECONSIDERATION BECAUSE HIS OBJECTIONS HAD NOT BEEN CONSIDERED, AS UNTIMELY EVEN THOUGH PETITIONER HAD NOT RECEIVED THE COURT'S ORDER SETTING THE COURT ORDERED DEAD-LINE IN WHICH TO FILE OBJECTIONS. See [APPENDIX-B PAGES R19-R24] NEVER THE LESS, THE UNITED STATES DISTRICT COURT DENIED THE MOTION TO RECONSIDER WITHOUT CONSIDERING THE PETITIONER'S OBJECTIONS TO RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE. See [Appendix-C PAGES R169-R172] IS ANOTHER VIOLATION OF PETITIONER'S FEDERALLY PROTECTED RIGHTS.

PETITIONER APPEALED TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, FILING APPELLANT'S COMBINED OPENING BRIEF AND APPLICATION FOR A CERTIFICATE OF APPEALABILITY. See [Appendix-B PAGES R3-R50] REASSERTING HIS FEDERAL CONSTITUTIONAL CLAIMS, THAT THE PETITIONER'S SENTENCE IS ILLEGAL BECAUSE IT NOT ONLY VIOLATED COLORADO RULE OF CRIMINAL PROCEDURE - RULE 11, COLORADO REVISED STATUTE §18-1-408(3); BUT ALSO VIOLATED PETITIONER'S FEDERALLY PROTECTED RIGHTS WHEN PETITIONER IS ACTUALLY INNOCENT OF SUCH FACTS MADE ESSENTIAL

ISSUE ONE

TO HIS PUNISHMENT / CONSECUTIVE SENTENCES BE-
CAUSE HE HAS NOT BEEN FOUND GUILTY OF SUCH
FACT IN A JURY TRIAL, NOR HAD HE PLEAD
GUILTY TO SUCH FACTS DURING THE COM. P.
rule 11 - PROVIDENCY HEARING. SEE [APPENDIX-
B PAGES R24 - R50] IS THE EXCEPTION TO ANY
PROCEDURAL DEFAULT ALLEGED. SEE, MURRAY V.
CARWER, 477 U.S. 478, 496; 91 L. ED 2D 397; 106 S.
CT. 2639 (1986). PETITIONER ADDITIONALLY FILED
SUPPLEMENTAL ARGUMENT WITH MEMORANDUM OF
LAW IN SUPPORT FOR EXCEPTION TO FEDERAL
STATUTE 28 U.S.C. § 2254 (b)(1)(A) REQUIREMENT ON
EXHAUSTION OF STATE COURT REMEDIES. SEE [APPENDIX-B PAGES R51 - R65] REQUESTING FOR
FEDERAL COURT OF APPEALS TO CONSIDER THIS
HONORABLE COURT'S RULING IN BLAKELY V.
WASHINGTON, 542 U.S. 296 (2004) AND APPENDI
V. NEW JERSEY, 530 U.S. 466 (2000) [APPENDIX-B
PAGE R54] SEE ALSO [APPENDIX-B PAGES R15 - R16]

THE UNITED STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT DENIED CERTIFICATE OF APPEALABILITY
WITHOUT ADDRESSING PETITIONER'S FEDERAL
CONSTITUTIONAL CLAIM THAT THE USE OF SUCH FACTS
TO DENY POSTCONVICTION RELIEF BY THE TRIAL COURT,
AND COLORADO COURT OF APPEALS USING SUCH
FACTS TO DENY POSTCONVICTION APPEAL DEPRIVED

ISSUE ONE

HIM OF HIS SIXTH AMENDMENT RIGHT TO A JURY TRIAL ON ALL MATERIAL FACTS ANY COURT OF LAW MAKES ESSENTIAL TO HIS PUNISHMENT/CONSECUTIVE SENTENCES, A VIOLATION ALSO OF HIS FOURTEENTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION OF LAW RIGHT GUARANTEED IN THE CONSTITUTION OF THE UNITED STATES. See [Appendix-B Pages R66-R75] IN FACT, THE UNITED STATES COURT OF APPEAL ALLEGED FACTS THAT "ONE OF THE POLICE OFFICERS - IN A FULLY MARKED PATROL CAR WITH HIS LIGHTS AND SIREN ACTIVATED - TRIED TO PULL SANCHEZ OVER BUT WAS UNABLE TO DO SO;" IS AN UNREASONABLE DETERMINATION OF FACTS BECAUSE AMONG OTHER THINGS, PETITIONER NEVER PLEAD GUILTY TO SUCH FACTS DURING THE CRIM. P. Rule 11-PROVIDENCY HEARING, VIOLATED THE PETITIONER'S SIXTH AMENDMENT RIGHT TO A JURY TRIAL ON SUCH FACTS WHICH ARE MADE ESSENTIAL TO HIS PUNISHMENT, GUARANTEED IN THE CONSTITUTION OF THE UNITED STATES. See [Appendix-B Pages R67 and R74] AS THE FEDERAL COURT OF APPEALS DEPARTED FROM THE ESSENTIAL REQUIREMENT OF LAW, WHEN IT RULED BASED ON SUCH FACTS THAT "WHILE THE ATTEMPTED FIRST-DEGREE ASSAULT CONVICTION WAS BASED SANCHEZ'S ACT OF DRIVING HIS CAR INTO THE OFFICER'S VEHICLE,"

ISSUE ONE

THE VEHICULAR-ELUDING CONVICTION "WAS BASED ON THE CHASE THAT OCCURRED BEFORE THE ATTEMPTED ASSAULT," WHICH ALSO VIOLATED PETITIONER'S DUE PROCESS AND EQUAL PROTECTION OF THE LAW

GUARANTEED IN THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES; BECAUSE NOT ONLY THE SIXTH AMENDMENT REQUIRED A JURY TRIAL OR PETITIONER TO PLEA GUILTY TO SUCH FACTS BEFORE THE FEDERAL COURT OF APPEALS FOR THE TENTH CIRCUIT MAY USE SUCH FACTS TO DENY CERTIFICATE OF APPEALABILITY. SEE ALSO, THAT THE BLAKELY V. WASHINGTON 2d. COURT HELD THAT CRIMINAL DEFENDANTS HAVE THE RIGHT TO A JURY TRIAL ON "ALL THE FACTS WHICH THE LAW [IN THE INSTANT CASE 18 U.S.C. § 18-1-408(3)] MAKES ESSENTIAL TO THE PUNISHMENT." 542 U.S. 296, 304; 124 S. CT. 2531; 159 L. ED 2D 403 (2004) INTERNAL QUOTATION MARKS OMITTED (R225). ALSO, SUCH FACTS DOES NOT ALLEGED THAT MR. SANCHEZ FAILED TO PULL OVER WHEN STATED OFFICER TRIED TO PULL SANCHEZ OVER TO SATISFY THE CONDUCT WHICH AMOUNTED TO THE ELEMENTS FOR THE CRIME OF VEHICULAR-ELUDING. SEE [APPENDIX-B PAGE R67]

PETITIONER FILED A MOTION FOR REHEARING ON ORDER DENYING CERTIFICATE OF APPEALABILITY. SEE [APPENDIX-B PAGES R76-R85] THE -

ISSUE ONE

FEDERAL COURT OF APPEALS FOR THE TENTH CIRCUIT
REFUSE TO ADDRESS NOR RULE ON PETITIONER'S
MOTION FOR REHEARING, SEE [APPENDIX - B PAGES
R76-85]

ISSUE TWO

THE FACT THAT PETITIONER APPEALED AND ALL LOWER
STATE AND FEDERAL COURTS REFUSED TO ADDRESS
THE FEDERAL CONSTITUTIONAL CLAIM, THAT THE
USE OF MATERIAL FACTS ABOUT AN ADDITIONAL
VEHICULAR-ELUDING CRIME PETITIONER WAS
NOT CHARGED FOR, PETITIONER NEVER PLEAD
GUILTY TO SUCH FACTS TRIAL COURT MADE
ESSENTIAL TO HIS PUNISHMENT/CONSECUTIVE
SENTENCES - WHEN USED SUCH FACTS TO DENY
POSTCONVICTION RELIEF; COLORADO COURT OF
APPEALS REFUSED TO ADDRESS THE FEDERAL
CONSTITUTIONAL CLAIMS AND UNLAWFULLY USED
SUCH MATERIAL FACTS TO DENY POSTCONVICTION
APPEAL; AND UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT, ALSO REFUSED TO
ADDRESS THE FEDERAL CONSTITUTIONAL CLAIM
AND DEPARTED FROM THE ESSENTIAL REQUIREMENTS
OF LAW WHEN USED SUCH FACTS TO DENY CERTIFI-
CATE OF APPEALABILITY; DEPRIVED THE PETITIONER

ISSUE TWO

OF HIS FIRST AMENDMENT RIGHT TO PETITION THE COURT FOR REDRESS OF GRIEVANCES GUARANTEED IN THE CONSTITUTION OF THE UNITED STATES [U.S.C.A.]

IN *LEWIS v. CASEY*, 518 U.S. 343, 351-52 (1996) THIS HONORABLE COURT SET FORTH THE STANDARD FOR A CONSTITUTIONAL ACCESS TO THE COURT CLAIM REQUIRES A SHOWING OF ACTUAL INJURY - THAT IS, THAT THE DEFENDANT'S ACTIONS HINDERED THE PRISONER'S ABILITY TO PROCEED WITH AN ACTUAL, NONFRIVOLOUS CLAIM. SEE ALSO, *Vreeland v. SCHWARTZ*, 613 F. App'x 679, 683 (10TH CIR 2015)

THE DELIBERATE REFUSAL TO ADDRESS AND ADJUDICATE PETITIONER'S FEDERAL CONSTITUTIONAL CLAIM, THAT TRIAL COURT'S USE OF MATERIAL FACTS ON ITS ORDER TO DENY POSTCONVICTION RELIEF, ABOUT AN ADDITIONAL VEHICULAR-ELUDING CRIME THE CRIM. P. rule 11-providency HEARING TRANSCRIPT RECORD DOES NOT SUPPORT ANY INDICATION THAT PETITIONER PLEAD GUILTY TO SUCH FACTS, and THE TRIAL COURT MAKING SUCH FACTS ESSENTIAL TO PETITIONER'S PUNISHMENT / CONSECUTIVE SENTENCES, ON ORDER DENYING POSTCONVICTION RELIEF WHICH IS A

Issue Two

NONFRIVOLOUS CLAIM BECAUSE IT VIOLATES PETITIONER'S SIXTH AMENDMENT RIGHT TO A JURY TRIAL ON ALL MATERIAL FACTS SENTENCING COURT MAKES ESSENTIAL TO HIS PUNISHMENT/CONSECUTIVE SENTENCES; WHICH IS ALSO A DUE PROCESS AND EQUAL PROTECTION OF LAW RIGHT GUARANTEED IN THE FOURTEENTH AMENDMENT; and THE FAILURE OF ALL PREVIOUS STATE and FEDERAL COURTS TO ADDRESS THIS ISSUE, and ADJUDICATE PETITIONER'S FEDERAL CONSTITUTIONAL CLAIM NOT ONLY HAS CAUSED HIM ACTUAL LEGAL INJURY BECAUSE THIS WOULD BE HIS LAST and ONLY APPEAL ON THIS ISSUE; BUT IT CAN BE SAID TO HAVE VIOLATED PETITIONER'S FIRST AMENDMENT RIGHT TO PETITION THE COURTS FOR REDRESS OF GRIEVANCES. THE FIRST AMENDMENT REQUIRED THE PREVIOUS STATE and FEDERAL COURTS NOT ONLY TO ADDRESS THE FEDERAL CONSTITUTIONAL CLAIM PETITIONER PRESENTED, BUT ACTUALLY ADJUDICATE THE CLAIM ON THE MERITS. INSTEAD, THE PREVIOUS STATE and FEDERAL COURTS DEPARTED FROM THE ESSENTIAL REQUIREMENT OF LAW, VIOLATING THE VERY CONSTITUTIONAL LAWS THE PETITIONER WAS SEEKING REVIEW ON, and use SUCH UNREASONABLE FACTS TO CIRCUMVENT

ISSUE TWO

THE FIRST AMENDMENT requirement to address and adjudicate on the merits the Federal Constitutional Nonfrivolous Sixth Amendment claim raised in all previous state and Federal Courts.

If we review the Colorado Court of Appeals order affirmed clearly it states: "claims we do not address" even though these are fundamental constitutional errors that should be addressed even absent of objections or for the first time on appeal. see [Appendix - D Pages R239-240]

Next, we review the United States District Court's Magistrate Judge's recommendations. Not even a mention of Petitioner's Federal Constitutional claim. see [Appendix - c pages R156-166] United States District Court's order Denying Petition for writ of Habeas Corpus and Motion to Reconsider, also failed to address Petitioner's Federal Constitutional claim. see [Appendix - c Pages R167-R172]

Petitioner believes the worse violation of his First Amendment right to petition the court for

ISSUE TWO

Redress of Grievances came from the United States Court of Appeals for the Tenth Circuit's Deliberate Failure to Address Petitioner's Federal Constitutional Claim. See [Appendix-B Pages R66 - R75] In fact, the Federal Court of Appeals (10th cir) Joined in the violation of Petitioner's Sixth Amendment right to a Jury trial on all material facts which any court makes essential to Petitioner's Punishment / Consecutive Sentence, as the Tenth Circuit based its order Denying Certificate of Appealability on material facts about an additional vehicular-eluding crime, the record transcript of the crim. P. rule 11 - Proximity Hearing Does not support - that Petitioner Plead Guilty to such facts, For Courts to make such facts essential to Petitioner's Sentence in order to circumvent the essential requirement to address and adjudicate Petitioner's Federal Constitutional Claim violated Petitioner's right to Petition the Court for Redress of Grievances Guaranteed in the First Amendment to the Constitution of the United States. See [Appendix-B Pages R73 - R74] By not finding that Colorado Court of Appeals had Denied

ISSUE TWO

RELIEF BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS [APPENDIX - B PAGE R74] THE FEDERAL COURT OF APPEALS FOR THE TENTH CIRCUIT DELIBERATELY FAILED TO ADDRESS PETITIONER'S FEDERAL CONSTITUTIONAL CLAIM IN VIOLATION OF HIS DUE PROCESS AND EQUAL PROTECTION OF LAW RIGHT GUARANTEED IN THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

PETITIONER ADDITIONALLY STATES THAT IN LUNEN CORRECTIONAL FACILITY THERE HAS BEEN A MAJOR COVID-19 OUT-BREAK CAUSING FOR OVER 400+ INMATES TO TEST POSITIVE FOR THE VIRUS AND THE FACILITY IS IN MODIFIED-OPERATION "LOCK-DOWN" CAUSING FOR THE INSTITUTIONAL IN-PERSON LAW LIBRARY SERVICES TO BE SUSPENDED UNTIL FURTHER NOTICE. FOR THIS REASON, PETITIONER THEREFORE REQUEST FOR THE CONTENTS OF THIS PETITION TO BE CONSTRUED LIBERALLY TO ENSURE HE IS NOT DENIED RELIEF "FOR HIS INABILITY TO ARTICULATE HIS CONCERNS WITHIN THE LEGAL LEXICON." *People v. Bergerud* 223 P. 3d 686, 696-697 (Colo. 2010) ALSO E.G., *HALL v. GRIEGO*, 896 F. SUPP. 1043, 1046 (D. Colo. 1995), *COLLINS v. CUNDY*, 603 F. 2d 825, 827 (10TH CIR 1979); *HAINES v. KERRER*, 404 U.S. 519, 520-21, 92 S.

Issue Two

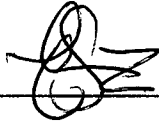
CT. 594, 595-96, 30 L. Ed 2d 652 (1972); and
ERICKSON v. Pardus, 551 U.S. 89, 127 S. CT 2197
(U.S. 2007)

PETITIONER IS "ACTUALLY INNOCENT" OF
SUCH FACTS ABOUT AN ADDITIONAL VEHICULAR-
ELUDING CRIME PRIOR TO THE TACO BELL INCIDENT
WHICH HE HAS NOT PLEAD GUILTY TO SUCH FACTS
NOR HAS A JURY OF HIS PEERS HAS FOUND HIM
GUILTY OF SUCH FACTS; NOR DOES THE
TRANSCRIPT RECORD OF THE CRIM. P. RULE 11 -
PROVIDENCY HEARING SUPPORT SUCH FACTS;
RENDERS THE PETITIONER'S SENTENCE ILLEGAL
AND UNLAWFUL, BECAUSE IT VIOLATES THE
COLORADO CRIMINAL PROCEDURE RULE 11;
THE COLORADO REVISED STATUTE SECTION
18-1-408(3); SUCH FACTS ON TRIAL COURT'S
ORDER DENYING POSTCONVICTION RELIEF THE
PETITIONER DID NOT PLEA GUILTY TOO VIOLATED
THE SIXTH AMENDMENT AND THE DUE
PROCESS AND EQUAL PROTECTION RIGHT GUARANTEED
IN THE CONSTITUTION OF THE UNITED STATES
AND THIS FUNDAMENTAL ERROR CAN BE
CORRECTED AT ANY TIME EVEN FOR THE
FOR TIME ON APPEAL AND REGARDLESS OF
ANY ALLEGED PROCEDURAL DEFAULT. SEE
MURRAY v. CARREER, 477 U.S. 478, 496 (1986)

HAD THE UNITED STATES COURT OF APPEALS (10TH CIR) addressed and ruled on PETITIONER'S 6TH AMENDMENT CLAIM - AS ALSO RAISED ON THIS PETITION; and addressed and ruled on PETITIONER'S 14TH AMENDMENT CLAIM - THAT VIOLATION OF STATE SENTENCING STATUTE § 18-1-408 (3) C.R.S., DEPRIVED PETITIONER OF HIS DUE PROCESS and equal PROTECTION OF THE LAW RIGHT GUARANTEED IN THE CONSTITUTION OF THE UNITED STATES, A WRIT OF HABEAS CORPUS WOULD HAVE BEEN GRANTED.

CONCLUSION

The petition for a writ of certiorari should be granted. and THE PETITIONER PRAYS THIS HONORABLE COURT WILL ORDER HIS IMMEDIATE RELEASE FROM CUSTODY; Respectfully submitted, and ANY FURTHER relief Deemed JUST and APPROPRIATE,



Date: 1-12-2021