Supreme Court, U.S.
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No. 20-8463

IN THE

SUPREME COURT OF THE UNITED STATES

Luther Pete Haynes — PETITIONER
(Your Name)

vs.

M. Houston, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 9th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Luther Pete Haynes, AW-6163
(Your Name)

P.O Box 3100, CIM, C-1-alpine-2194
(Address)

Chino, Calif. 91708
(City, State, Zip Code)

-0-
(Phone Number)

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Court Questions to Decide

1) Did the U.S. 9th Cir. Ct. Place to high a burdon Denying COA when Haynes merely had to show Jurists of reason could Disagree with the Dist. Court resolution, and evidence once verified, a reasoned Jurist could conclude, the issues Presented are adequate to deserve encouragment to Proceed further (Buck v Davis, no. 15-8044).

2) Did the U.S. Dist. Court abuse it's diccretion refusing to conduct an Evidentiary Hearing, violated Haynes Due Process to review new evidence regarding the illegal extradition, Arrest and inferences to Guilt and Jurisdiction on the merits. the Dist Ct. referencing only, "from the Available record". (Appx 4, R&R, p. 25 ft. nt. (25)) that once verified true, establishes a basis for relief. (2254 (e)(2) (reference, Appx. 8, Attch. 1, gr. X, P. 117 to 121); (Earp v Ornoski 41 F.3d. 1188, 1167 (9th cir. 2005); (Toten v Merkle 137 F.3d 1172, 1176 (9th cir. 1198).

3) Did the State Courts denial of Haynes claims to a fair and speedy Trial after a 20 year delay and w/o Conducting a Barker v Wingo inquiry into Actual / Presumed PreJudice,

Luther Pete Haynes

Due Diligence, gov. culpability, and a 1985 misdemeanor warrant, let expire, violate the 5th & 14th Amendment to the U.S. Constitution rights to Due Process and the 6th Amendment right to the Presumption of PreJudice. (See Appx. 8, Attch. 1, gr. IV, P. 73); (Doggett (1992) 505 us 657); (Barker v wingo (1972) 407 US 514, 92 S.Ct. 2182, 33 L.ed. 2d 101); (Klopfer v north Carolina 386 us 213 [18 LEd. 2d. 1] 87. S.Ct. 988).

4) Was Haynes unfairly denied his 5th, 6th & 14th Amendment to the U.S. Constitution equal Protections to Fair and Speedy trial guarantees, when the State and Fed. Dist. court made rulings Contrary to factually the same Holdings found in well adopted Supreme Court Precedents and 9th Cir. Jurisprudence (see Appx. 8, Attch. 5, P. 6, mendoza); (Mendoza (9th cir. 2008) 530 F.3d. 758); citing Doggett v U.S. (1992) 505 us 657, 120 LEd. 2d. 520, 531-532, 117 S.ct. 2684, 2686).

5) Did the Purposeful distruction by the FUPD of all the records, closing case #95-0524 in 2003 [12 yrs. before Haynes trial], necessarily result in gov. neglect and the total lack of Due

Diligence to Pursue an expired warrant or Haynes over nearly 2 Decades, ultimately PreJudiced the Defense, violating Protections afforded by the 5th, 6th, 14th Amendments to the U.S. Const. (See Doggett v U.S (1992) Supra).

6) Did only Clerks as shown in the minute order for the First 19 years before arrest, conducting the Courts Business [Filing, Amending and issueing warrents w/o any Proceedings] have Authority to Alter, then issue Haynes unsigned felony or Misdemeanor Warrant or Complaint in 2014, clearly after it was filed on June, 28, 1995. these Solely used at Trial to take Jurisdiction, violated Haynes 4th Amendment to the U.S. Const. rights, rendering the conviction unconstitutional void. (Shadwich v City of tampa, 407 U.S 345, 92 S.Ct. 2119; 32 L.Ed. 2d. 783, 1972 US lexis 39.

7) Did the Prosecutions Suppression of Evidence to Circumstances of Haynes illegal Arrest Proceding and Extradition from the Philippines violate Haynes 4th & 14th Amendment rights to Due Process and Proper Siezure.

8) Haynes was Extradited back to California in 2014 on a Procedurally expired and thus invalid and unenforcable 1995 [altered], misdemeanor Warrant [See Appx 8, Attch 2, ex. 5, P. 7]. Now verified in open Court when the Prosecution admitted 3 days after his return on 8/27/14, "It looks like the filing as a misdemeanor was clearly an error." "It was corrected..." (See Appx 8, Attch 2, ex 1, P. 7 (19-21). Is this Conduct and insueing Coverup shown in Appx. 8, Attch. 2, ex. 1-5 et. al., good cause to violate Haynes Due Process guaranteed in the 4th, 5th, 6th & 14th Amendments to the U.S. Constitution and clauses in the Phil.-U.S. Extradition treaty of 1994. Rendering the Conviction Constitutionally void.

9) Did the Prosecutors failure to disclose, misstatement of Facts, hiding and misconstrueing evidence on matters of guilt and Jurisdiction. Purported out of the 20 year Delay in coming to trial, violate Due Process Precedents set in Brady, Mooney, and Napue. thus rendering Haynes trial unfair leaving a Conviction in Constitutional uncertianty.

Questions

10) Can the Court find a reasonable Doubt in the Constitutional uncertianty of a conviction, where every reviewing officer of multiple Courts all agree, there is "no inappropriate or Criminal activity", "nothing untoward", as to the Alleged misdemeanor Conduct. Nor, would the FUPD have Destroyed all the evidence, Purged the Files, and Closed a Felony case, if there was "Bad" photos. As it is there Job to Protect evidence to Convict. Clearly infers there is no such conduct as charged, is then implausable and the very definition of an actual Innocence Claim (See Appx 8, Attch 1, gr. 1, p. 2 to 6).

11) To fully Address issues brought to this Honorable Court of last resort. Haynes Seeks remand back to the lower Courts as Provided by law to Conduct a Barker v Wingo Speedy Trial inquiry (407 cal rptr 428) and Appt. Counsel [Due to the Virus Haynes has no Access to law library (See lewis v casey (1996) 518 us 343)], to Verify the Petition and expand the record thru an Evid. Hearing into new evidence and facts newly Presented relating back to issues Previously brought, were Not Considered on the Merits establishes a basis for relief. (See Appx 8, Attch 3, gr. X, P. 117-121); (See Appx. 1, review denied).

(7)

I. Luther Pete Haynes

I am the petitioner in this action. I have read the foregoing petition for writ of habeas corpus and the facts stated therein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Bernardino, CIM, Ca and on 3/4/21/4/28/21

Petitioner

Date: refiled 5/26/21

AW-6163

CDCR Number

In re: Luther Pete Haynes
AW 6163
C-1-Alpine, 207u
P.O.Box 500, C.I.M
Chino, Ca. 91708

Q7

LIST OF PARTIES

[X] 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:

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INDEX TO APPENDICES[1]

See table of Appendices Attached 1 to 8 Following table of Contents Pages IV–VIII

Lower Court Opinions are included In Appendicies 1 to 7

1) Appendicies renumbered as 1 to 8; Abbreviated as Appx. in text; and APX. on tabs.

Table of Appendicies Seperately Bound and Numbered as 1 to 8 replacing A to H Lower Court orders and Opinions

Attatchments 1 to 7

Table of Appendicies Continued

Ground III: Due Process; Due Diligence lacking Over 2 decades of Delay

Ground IV: 6th Amendment Right to Attach to Misdemeanor Conduct to the Presumption of Prejudice after a 20 year delay in coming to trial.

Attatchment 2: Ground VIII, Prosecutorial misconduct, recrafting changing Documents once rendered expired, invalid and unenforcable, to take illegal Jurisdiction.

Attatchment 3: Ground X: Right to an Evidentiary Hearing.

Attatchment 4: the Same legal Precedents found in US v Mendoza (9th Cir. 2008) 530 F.3d 758, should apply in Hagnes.

Attatchment 5: Statement of Facts as Found in the Record

Attatchment 6: New Evidence addended for Reconsideration of Denial of Application for C.O.A was not considered on the Merits - contradict the findings of the Dist. Court Magistrate Judge in R&R

Attatchment 7: Statement of the case from 1989 to 2021

Luther Pete Hagnes, AW-6163

Detailed Table of Contents - Petition for Writ of Certiorari

Luther Pete Haynes, AW-6163

Included as References Seperately Bound

Exhibits I to VII include Facts from the Record cited in the Writ of Certiorari

Appendicies 1 to 7: lower Court orders and Opinions

Appendix 8 with attatchments 1 to 7: Facts and Grounds Previously Brought for relief in the 9th Circuit Court of Appeals from the U.S. District Court for the Central Dist. of California

In re Luther Pete Haynes
AW 6163
C-1-alpine 2194
P.O. Box 3100, CIM.
Chino, CA. 91708

Table of Authorities

Luther Pete Haynes

Table of Authorities-Continued

* Cites out of order

Luther Pete Haynes

X

Included As
Statement of The Case (15)
Reasons to Grant the Petition (16)

In re: Luther Pete Haynes
AW 6163
C-1-Alpine, 207u
P.O.Box 500, C.I.M
Chino, Ca. 91708

In the Supreme Court of the United States
for Review after denial in the
United States Court of Appeals
for the Ninth Circuit

Supreme Ct. NO: ___
9th Cir. Ct NO: 19-56139
Dist Ct. NO: SACV-19-00640 JGB(PLA)

In re Luther Pete Haynes v M. Houston, warden On Habeas Corpus	Haynes moves the Court to Review the Denial of Application for COA to Reverse the Decision, Grant COA or Remand for Evid. Hearing and Appt. Counsel, Supreme Court Rule 10; Rule 13.3, Grant the Writ

Petition for Writ of Certiorari after Denial to Grant C.O.A.

Memorandum of Points and Authorities

Jurisdiction Given after Final Judgemententent in the 9th Circuit Court of Appeals denying C.OA. on 12/14/20; Denying reconsideration on 1/20/21; Pursuant to Supreme Court Rule 10; Rule 13.3.

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 1&2 to the petition and is

[ ] reported at Have no Access to Computer now; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix 3&4 to the petition and is

[ ] reported at Have no access to Computer now; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 5,6 to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Orange County Superior court appears at Appendix 7 to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

(13)

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Dec 14, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1/14/21, and a copy of the order denying rehearing appears at Appendix 1.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including 60days (5/10/21) (date) on 3/10/21 (date) in Application No. __A____. Letter from clerk

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 3/13/2019. A copy of that decision appears at Appendix 5.

[ ] 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).

In the Supreme Court of the United States

Constitutional and Statutory Provisions As they were Presented in the U.S. Dist. Court

STATEMENT OF PURPOSE

Grounds have been properly and adequately brought in order to make a full and fair presentation to all laws, facts and factual contexts supporting Federal relief to claims of constitutional violations and U S. Supreme Court authority in this petition. As required, all issues for relief are included in this original petition for Writ of Habeas Corpus now at bench, are meritorious and were unreasonably denied in the California State Courts. There is no abuse of the Writ here.

Pursuant to Federal Habeas rule 2 (c) of rules governing section 28 usc 2254 (b)-(c) and 28 usc 2255 (b) (2) (a), Federal petitioner must sufficiently bring all grounds in the 1st instance to this Honorable U. S. Central District Court of California. To satisfy this, all claims were previously brought in the California Supreme Court to fully exhaust all state remedies for Federal Habeas Corpus purposes (crc 8.508) (Haines v Kerner u.s. 404, u.s. 519, 520 (1972), tolling AEDPA since 4/2/18.

ISSUES PRESENTED FOR REVIEW

All claims presented for judgement are seen in the accompanying memorandum of Points & Authorities as grounds I to X of this petition (See Appx8, Attachments 1, 2, 3, 4, & 6), establishes facts supporting arguments in opposite to clear error for an unreasonable denial of the original filed Orange County Superior Court WHC #M-17469. (See also Exhibits I to VII)

The State Court refusal to adequately address claims citing "Successive Petitions" is an erroneous interpretation of the facts. (ocwhc-m-17469, opinion page 5, line

Luther Pete Haynes, AW6163

11-12). 28 USC 2244 (b) concerns only successive applications that challenge the same court judgement. (see ground X, p. 191)(See Appx. 7, P. 2, included.

As such, these fundamentally flawed factual findings adopted without sufficient evidence or to conduct an evidentiary hearing gives this Honorable Court indifference to decide Denovo, facts supporting claims asserted in this petition, claims that if found true would now grant relief.

Further, an erroneously applied State procedural rule does not bar Federal Habeas Corpus review. (Sivak v Hardison (9th cir., 2011) 658 F. 3d 898 907) The State courts refusal to conduct an evidentiary hearing into these disputed facts is clear error.

NECESSITY OF REVIEW

In order to adequately review these matters of U.S. and California constitutional violations because it is a mixed question of fact and law. This Honorable Courts determination turns on whether relief sought by petitioner require the court to consider these mixed legal concepts when exercising concerns of factual accuracy and efficiency in determinations the court must give to precedential weight in any constitutional claim. All favoring independent review as to whether there is a miscarriage of justice based on the new standard (p.c.1473 Jan. 1, 2017) of "more likely than not"... (see ground I). As here in Haynes, constitutional law apply to cases that were still pending on direct review when new rule was created (Griffith v Kentucky (1987) 479 u.s. 314, 322 (107 s. ct. 708 93 led. 2d 649). This new standard was denied Haynes in the State reviewing courts.

Where it is shown the State court fact finding is fundamentally flawed and the decisions are contrary to well adopted U.S. Supreme court authority, this Honorable Court may now decide these factual claims of actual prejudice and egregious violations of these U. S. Constitutional rights insured to California State citizens thru the 14th Amendment. (see ground III this petition).

CONSTITUTIONAL VIOLATIONS

4th Amendment

Haynes illegal arrest procedure, prosecution and extradition from the Philippines was without jurisdiction and violated provisions of the Phil - U. S. extradition treaty, 1994. (see ground VIII (A) (B), Appx 8, Attachment 2, and Exhibits 1 to 5)

5th Amendment

Haynes incurred multiple due process violations where purposeful gov. abuse and neglect is shown, non-speculative, arising from the 20-year delay resulting in actual prejudice and a fundamentally unfair trial process. (see grounds II, III, ; VIII., included in Appx. 8, Attch. 1 thru 4).

6TH Amendment

1) Haynes was denied a right to a fair trial and the opportunity for a complete defense, where otherwise taken and gov neglect can be shown. Prejudice would then be presumed for egregious delays exceeding the statute of limitations for misdemeanor conduct. Relief would then be compelled (see ground IV). This was a misdemeanor. (see ground VIII) i.e; the evidence shows an expired and destroyed 1995 original warrant was crossed out on the archived complaint. A misdemeanor warrant at arraignment was all that was seen by officers of the court to have issued in 1995. This warrant was all that could have been seen in the "system" for only the first five years. It was subsequently destroyed by the court pursuant to gov. code 68152. (see ground VIII). No valid warrant was seen after 6/22/2001. (see ex. II, P. 6 & 7). Without jurisdiction from any gov. agency, Haynes was illegally extradited from his home in the Philippines 8/23/14 on this destroyed misdemeanor warrant, is no warrant at all. (see ground VIII (B)), ex. II, 'c', p. 64, line 19-21) (Appx. 8, Attatchment 2 & Exibits 1 to 5).

The Orange county court took illegal jurisdiction 4 days later at an arraignment on 8/27/14. The people during the same hearing w/o authority changed the misdemeanor warrant (now given a new number) into a felony (see ex. "C" certified transcripts, EX. II, P. 14 (pages 58-73).

Most importantly this Honorable court needs to decide if this misdemeanor prosecution for 20 years then turned felony, subjected Haynes to "different constitutional standards" thereby depriving Haynes of lawful gov. procedures, precedential authority and relief. When relief, otherwise would already be constitutionally guaranteed as a structural error for any such misdemeanor prosecution.

2) Appellate counsel failed to bring these issues; issues of factual innocence and sufficiency of evidence claims as purported; "would properly have been raised on appeal", stated in the Superior court opinion of the Honorable Judge Pham. (see Appx. 7, Sup. court order M-17469, p. 5 line 6-8). This Honorable court can now decide I.A.C., Counsel failure to bring meritorious claims resulting in procedural defaults barring review in state court prejudiced Haynes defense. (see Appx. 7, p. 5, lines 6-8)

8th Amendment

Haynes was subjected to an illegal arrest procedure 20 years "after the fact" for alleged conduct that can be defined as a mere infraction. The sentence of 25 to life, where it is shown Haynes has been unduly prejudiced from the delay (see ground II) and in fact factually innocent (see ground I). The court can consider this as cruel and unusual punishment (see ground IX)(see Appx 8, Atth. 1, gr. I).

14th Amendment

Federal due process rights were not enforced in the state court; i.e. (one example), the trial court quotes: "(the court) will not hold the state liable" for not pursuing Haynes. (see ex. VII "S", p. 850-857). Contrary to this, both state and federal gov. have the responsibility to bring an unknowing defendant to trial (and to protect the evidence). Orange County did neither. (see exhibit "I", p. 867, line 4-11). (See gr. III Appx 8);(see ex. I, P. 867 (lines 5-11))

This Honorable court can decide this error not to hold the gov. responsible for this egregious lack of due diligence is at no fault to Haynes. That this is a clear violation of well adopted Supreme court authority enforced to the states by the 14th amendment (klopfer), (opinion/ex. IV(3) "H", p. 11 foot note 5). Where the gov. neglect is purposeful, relief would be granted (see ground II (D) Appx 8, Atth. 1)

HONORABLE JUDGES ARE SUPPOSED TO PROTECT ALL OF OUR RIGHTS

The Honorable Judge Hayes finds prejudice and quotes:

"This is an open case (with a warrant) and (material) evidence existed (in 1995) and as long as they (Orange County) wanted to pursue the warrant my reaction is they should have protected the evidence..."(see exhibit III", p. 682, line 8-11)

"So, if the records are unavailable the culpable party...in this case, it's law enforcement." (see exhibit III, p. 682 line 21-24)

But, Honorable Judge Hayes did nothing and unreasonably ruled against any finding of prejudice. This is clearly contrary to well adopted Supreme Court authority. New evidence withheld by the Prosecution showed the Case was closed in 2003.

Haynes is now compelled to beg this Honorable Federal District Courts review to find prejudice and relief from justice unreasonably denied in the lower state courts from abuse of discretion leading to clear errors; failing to find violations of the fore mentioned U. S. Constitutional Amendments and well adopted California and U S. Supreme Court Authorities. Haynes now seeks Protections in this Hon. United States Supreme Court after denial of ~~these~~ rights has Occured.

Date 3/4/21 / 4/28/21 / 6/24/21 (PH)

Luther Pete Haynes & Family

Introduction Statement of the case

Petitioner moves the Court for Review on Writ of Certiorari after denial of the Application for C.O.A. in the 9th Cir. Ct. of Appeals, filed on 12/14/20 (see Appx. 2) for case #1956139. the petition denied on 1/14/21, for a timely motion for reconsideration followed (see Appx. 1).

the Calif. Supreme Court gave Postcard denial on 3/13/19 (see Appx. 5). the Court of Appeal denied the case w/o opinion on 6/28/18 (see Appx 6). the Superior Ct. of Orange County Calif. Denied the Petition for W.H.C. with Opinion on 5/3/18 (see Appx. 7).

Why the Court Should Remand on Review of order and issue COA.

Petitioner believes the Honorable 9th cir. Ct. of Appeals has overlooked debatable decisions in the State & Dist. Courts or misapprehended specific Precedential Authority, controlling law, and facts supporting constitutional violations have occured. If taken as true, Jurists of reason merely have to find it debatable the Dist. Court got it wrong is reason enough to Proceed further. (Buck v Davis S.Ct. No 15-8049 (2017)); (Miller v El 537 us 327, 348)

A. Jurisdiction

Issues for Appeal which COA. is sought Rests on a showing decisions were Contrary to U.S. Supreme Court precedent and a manifest error by the State and U.S. Dist. Courts to Consider material facts w/o an Evid. Hearing, were based on false premise as Presented and referenced in Application for C.O.A., were Determinative in the Courts Denials. Now given for Writ of Certiorari review Pursuant to Supreme Ct. Rule 10; Rule 13.3 after timely Denial in the 9th Cir. Ct. of Appeals.

Review is then necessary to secure and Maintain

Luther Pete Haynes, AW6163

uniformity of the Courts decisions as to precedent and to the Truth of the Matter stated., to issue COA previously denied and Appoint counsel in Petitioners Pursuit of Protections in this Honorable 9th Cir. Ct. of Appeals. now for Review & Remand on writ of certiorari.
Such Precedential Application bound in unreasonable Determinations of Fact in Haynes has shown U.S. Const. violations of the 4th, 5th, 6th, and 14th Amendments incurred by Haynes impeded his const. right on review; to determine Equivical evid. obtained thru an Evidentiary Hearing of new Facts and Facts Newly Presented; His right to A Speedy & Fair trial; illegal Siezure and Arrest Procedure; illegal Extradition treaty Violations; and Denial without such Hearing to show the Prosecutions Failure to Disclose and misconstrued evidence also violated Haynes Due Process.

these Knowing misstatement of Fact clearly support misconduct by the State has occured[1], the prosecutions Free-wheeling unsubstantiated claims of Fact & law based on False Premises, Biased the court, PreJudiced the Defense, and Subverted evidence sufficient to deny Jurisdiction or to declare Haynes innocence (see APPX. 8, Attatchment 2, gr. VIII)

these Facts so Manipulated and undisclosed could not otherwise have supported a conviction if the trial had been held in 1995, resulted in a Substantial & injurious effect on the outcome of the Proceedings. this is the very definition of PreJudice.

1) Haynes is sorry the objection is not well taken by the Dist. Ct. this is the truth and no Fault to Haynes. (see order accepting Findings of mag. Judge P. 3, 16-20) (Appx. 4).

As referenced, Haynes original Petition (O.P.) and motion for COA (M.F.C), Statement of Facts and Grounds for relief rebutted by clear and convincing evidence, the Dist. Courts Application of the Calif. Court of Appeal objectively unreasonable factual findings.[2]

the Courts denial of COA is then contrary to well established U.S. Supreme Court Authority found in Brady V Maryland et al, included and should be reversed.

B. Brady violation Standard of Review

In Brady V Maryland 373 US 83, 83 S.Ct. 1194, 10 LED2D 215 (1963), the U.S Supreme Ct. held "that the suppression by the Prosecution of evidence Favorable to an accused upon Request violates Due Process where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the Prosecution (373 US @ 87).

the duty to disclose such evidence is applicable even though there has been no request by the accused, US v Agurs (1976) 427 US 97, 107, 96 S.Ct. 2392, 49 LED2D 342. the duty encompasses; impeachment evidence in addition to exculpatory evidence (US v Bagley 437 US 667, 105 S.Ct. 3375,

2) References to Abbreviations: Original Petition – O.P.; Motion For COA – M.F.C.; Court of Appeal opinion – C.O.A.O.; trial transcripts – Ct, Rt; Magistrate Judge Report & Recommendation – R&R; Statement of Facts – S.O.F.; Exhibits included in this motion For Writ of Certiorari – (ex.__ P.__ Cline)). Appendix – Appx.__; Attatchment – Attch.__; Ground – gr.__; motion for C.O.A. included as Appx 8, gr. 1-V, VIII, & X. Atth. 1-4. statement of Facts Provided as Appx 8, Atth. 5. (Statement of Case Appx 8 At. 7)

87 LED2D 481 (1985). A Brady violation may also occur when the gov. Fails to turn over evidence that is Known only to police investigators and not to the prosecutor. (Youngblood v West Virginia 547 us 867, 870, 126 S.Ct. 2188, 165 LED2D 269 (2006), quoting Kyles v whitley 514 us 419, 437, 438, 115 S.Ct. 1555, 131 LED2D 490 (1995). "the individual prosecutor has a duty to learn of any Favorable evidence Known to the others acting on the gov. behalf in this case, "Including the Police, (i.e. Purging the case in 2003).

As stated in Strickler v Green 527 us 263, 281-282, 119 S.Ct 1936, 144 LED2D 286 (1999), three components are required to establish a brady violation: "the evidence at issue must be Favorable to the Accused, either because it is exculpatory, or because it is impeaching; the evidence must have been suppressed by the State, either willfully or inadvertently; and PreJudice must have ensued. See Banks v Dretka 540 us 668 (2004); Silva v Brown 416 F.3d 980, 985 (9th cir. 2005), "the prosecutor is required to turn over evidence that is both Favorable to the Defendant and Material to the case" Amado v Gonzales 758 F.3d 1119, 1134 (9th cir. 2014).

A defendant is preJudiced by A Brady violation if the evidence that was not produced is material. Amedo v Gonzales (supra). Evidence is material if there is A reasonable probability that the result of the Proceedings would have been different, if the suppressed documents had been disclosed to the defense. "(Stricker 527 us @ 289).

the Question is not whether petitioner would more likely than not have received a different verdict. But, whether in it's absence he received a Fair trial, understood, as a Proceeding resulting in a verdict worthy of Confidence. (Kyles 514 us @434); Silva 416 F.3d 986, once the materiality of the suppressed evidence is established no further harmless error analysis is required. Quoting Silva" when the gov. has suppressed material Evidence Favorable to the defendant the conviction must be set a side. (see Appx 8, Atth. 2, exhibits 1-5 included)

C. Statement of Facts are Referenced to petition on Appeal, in motion to issue COA and it's Amendments.

Appx8, Provided in Part as Attatchment 1 to 7

Haynes was Forgotten For 20 yrs before being brought to trial in 2015 on specific Conduct alleged, clearly shown and adopted by every Judge Presiding over the Proceedings that there was no evidence of such criminal conduct as alleged to Support a conviction of the Statute charged. the fact Finders failed to entertain this Doubt shared by every officer of the court, so stated. the law says "beyond" A reasonable doubt, Haynes conviction does not meet this Standard. nor to any reasonable Doubt on review of new evidence found after trial

Instead the Prosecution brought a Slurry of Falsities including 40 yr. old PreJudicial inflamatory testimony of prior conviction already Stipulated to that projected conciousness of Guilt scenerios, Forclosed by the delay were conclusively indefensable, and had a substantial & inJurious affect on the Jury. (see I, #6, P.15-16-(line 28-23), Judges Opinion)

D. There was no Active Case in 2014 as 12 years before Haynes Arrest, the Case was Purged in 2003

the evidence is clear from the beginning of these proceedings [in 2014] the warrant used for Jurisdiction and Extradition from the P.I. was illegally recrafted well after the Original 1995 case was filed as a misdemeanor (PC314) subsequently expired & was destroyed after 5 years, Pursuant to gov. code 68152 as PC 647.6 (a)(1) is then Unenforcable.

the record shows warrant # FUPD 95 WM 08645 was destroyed by the Court by 2001 (ex. II p.5) rendering the case inactive. As a result the underlying complaint, FUPD #95~0524 was purged/closed in 2003 by the same Dept. there was then no possibility of Due Diligence by the State to Find and prosecute Haynes in A timely Manner. (see ex II p. 2,3). A criminal record search in 2001 Found no cases Filed in any O.C. Court at that time (see ex. II, p. 6-10) is Dispositive. (Appx 8, Attch. 2, ex 1, P.1).

So, there was no timely bases to reissue over the top of this misdemeanor complaint a new Forged Felony complaint; warrant # FUPD95 WF1289 used in Haynes illegal Arrest & Extradition in 2014 (See ex. II p. 11, 12).

E. Facts of this illegal Arrest and Extradition were Absolutely Known by the State and Never Disclosed. is Contrary to well adopted U.S. Supreme Ct. Precedent

1) "Sure we probably could have found him in the P.I. but we did not have the Obligation to do so (ex XIII, P. 848 (12-14))

2) "I do not want to convey to the Jury we Know.."

"where he was all along... [that] we were able to Find him... they are going to hear he was arrested... and was able to Find him." (Rt 654 (20-24) (ex IV (8), p. 654)

3) "All I can say is he was not extradited with regard to this charge." (Rt 654 (13-14); (ex IV (8) p. 654 (13-14).

4) DDA Bracic talking to reporters: "How he ended up back in the U.S. to Face charges... is a mystery." He says U.S. marshalls showed up... and arrested him, but there are no records of an extradition." (O.P. ex 'B' p. 1); (ex II p. 13). (see ex. 'W' Attatchment 4)

5) "He was Just picked up on the Warrant when re-entering the U.S." [oddly in 2014 as claimed, but not in 2001] (Rt 652 (23-26)); ex. IV (8) sec. 'O' p. 652 (23-26).

6) "I don't Know what happened in the Philippines." (3Rt 654 (16-17); (ex. IV (8) sec. 'O', p. 654 (16-17).

F. Clearly this Failure to Disclose evidence of Material Fact created A Systemic error that ran throughout the Proceedings

By Petitioners own Due Diligence evidence of this manipulation of the changing Documents, Haynes whereabouts, & other Documents refuting multiple prosecutorial deceptions of Fact were obtained From the Phil. Dept. of the Ombudsman, 3 years After conviction. this is a clear record going back to 1985 of Haynes travels and Extradition, subverted by the prosecution in 2014. this

References the warrant Faxed to the U.S. Embassy in Manila by Orange County on 7/30/14. (ex II sec. w' phil. papers p. 2, 4), establishing the sole basis for this illegal Extradition, they knew 100% where [we] were, & Hid it.

The Prosecutions outright Failure to disclose any knowledge of these proceedings enabled a substitution of False Facts, the conviction rested.

the Phil. Papers and evidence from the FUPD, that the case was in Fact purged in 2003 [obtained in 2018, 2019] rebut by clear & convincing material evidence the states deceptions and inferences to guilt absolutely PreJudred the Defense when Falsely Assenting:[3]
1) Haynes Fled
2) Haynes Hid.
4) Haynes did not travel in his true name
5) Haynes was undocumented
6) Haynes didn't have a valid passport in 2001
7) Haynes didn't come back to the U.S to work in 2001.
8) that Haynes hid his presence on his return in 2001.
9) Haynes was not arrested on this O.C. charge in the Phil.
10) Haynes was deported on a crime committed in the Phil.
11) the warrant Just picked him up on his "Voluntary" return to the U.S in 2014 (But not in 2001).
12) Haynes Fought Extradition
13) the State was extraditing Haynes since 2002.
14) there are no records of an Extradition.
15) the State didn't know where Haynes was. So, they waited for his return. then didn't look For 19 years is "logical."
All False statements [there is nothing logical Here].

3) See Page 40 for specific cites to the Record in Opposite

16) there was a Felony warrant and it was timely.
17) the case was an open case not A closed case [which it was since 2001/2003] (R+682); (ex III p. E82).

this is an Outrageous Abuse of power and this Knowing Failure to Disclose Fatally infected the trial with inferences to guilt & Fraud; taking illegal Jurisdiction 20 years too late (APPX. 8; Attch. 2, ground VIII p. 96-110); (ex. II) violates the 4th Amendment.

It is well documented A criminal Record search Found no case Filed in Hagues name, D.O.B, nor SSC # in any O.C. Court by 6/22/2001 (APPX 8, Atth. 2; Ex 1 p. 1); (ex II p. 6 to 10). the Hon. Judge Adams in 2014 "wonders" how Hagues was Extradited on a misdemeanor from the Philippines. Its all he sees. (ex II sec. 'C' p. 64); (APPX 8, Atth 2, ex 1, P. 4 (20-21).

the Dist. court then errored in determining how the altered [cut & pasted] zeroxed copy of the complaint/warrant looked today is how it was issued in 1985 is objectionably unreasonable and not supported in the evidence (ex II p. 1 to 15); (APPX 8, Attch 2, ground VIII pages 1 to 25) (see APPX 8, Attch. 2, ex 5, P. 7, misdemeanor offense sub sec. (A)(1), on original booking Record 8/24/14 unchanged). It then Follows taking Jurisdiction, Arrest and Extradition were obtained as "Fruit of The Poisenous tree" as such the conviction is invalid.

G. CoA standard for Reconsideration

the Application for COA included review of grounds

I to X are issues that Jurists of reason would find it debatable whether the Petition States A valid claim of the Denial of A Const. right (g.c.2253(c)(2). And, that Jurists would find it debatable whether the Dist. Ct. was Correct in it's ruling. (Slack v McDaniel (2000) 529 U.S. 473, 120 S.Ct. 1595, 146 LED2D 542) (Provided in part, Appx 8)

In Buck v Davis (No. 15-8049, (2017) the U.S. Supreme Ct affirmed, In Considering the Appl. for C.O.A., the only Question TO ask is the Cts. decision debatable (Miller v El 537 US 327, 348

Here Haynes has shown by clear & convincing evidence that Jurists could disagree with the Dist. Cts. Conclusions on the Merits, brought when denying the COA, could conclude the issues Presented are Adequate to deserve encouragement to Proceed further, the State nor U.S. Dist. Ct. Provided an Evid Hearing.

It then follows, this is all that is required. A Court Considering the Appl. for COA should not decide a denial based on Merits determinations the court should not have reached.

When the Ct. inverts the Statutory order of operations and first decides the Merits of an Appeal & then Justifys its denial of C.O.A. based on its adjudication of the Actual Merits it has Placed too high A burden on the Prisoner at the COA Stage (Miller-El, 537 US @ 336-337). Miller-El flatly Prohibits such departure from the Procedure Prescribed by GC. 2253 ibid.

Respectfully Submitted

Date 3/4/21 / 4/28/21

(PH)

Luther Pete Haynes

Memorandum of Points and Authorities

Reasons to Grant the Petition

Specific Facts are Provided in Exhibits I to VII Support Claims Found in the Record were Overlooked by the Court resulted in A Decision Denying COA is Contrary to well established U.S. Supreme Ct. precedent would be debatable amongst Jurists of Reason

I. Sufficiency of the Evidence Leaves Room for Doubt

In Haynes every Judge Presiding over the case including the Defense counsel and the Prosecuting Attorny adopted: the Photos depicted "no inappropriate nor criminal activity", this conviction based solely on this claim lacking any evidence meets the Standard in Jackson v Virginia 443 US 307, and should be overturned in the interest of Justice, as implausable.

these same officers of the court then answered the relevant Question now on Review: could it be debatable a Fully informed trier of Fact could have found the essential elements of this offense beyond a reasonable doubt, without the Prosecutions Failure to Disclose & Subsequent Deceptions, there was no case to try. (Appx 8, Atth 1, ground I (p.1-7); (APPX 8, gr. VIII p.1-25); (ex. I included) the Conduct as alleged is implausable (Appx. 8, Atth 1 gr. 1)

A. Facts From the Original Record, the sole witness Claims "It is A mistake"

Judge Hayes States: "there is no evidence other than pull his shorts down [underwater] & say take a picture (ex. I, p.669).

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1) Erin at trial 20yrs later is confused and says "I [Erin] was "mistaken" that "I" was in the Pool in [Sept] and said [Haynes] pulled down his shorts." (2Rt296); (ex I, p.296). [Haynes family was there only on 1/14/95].

2) Erin is asked again by defense counsel: "you explained Mr. Haynes pulled down his shorts in A Swimming Pool... was there something about that Prevented you from saying it was in an Apartment, It was in a bathroom, it wasn't in a swimming Pool." Erin replys: "I was mistaken" "I am not sure why I would have said that!" (2Rt 298); (ex I, p.298 (3-9)) this is Dispositive, testimony did change over time. there is no crime as it was originally charged in 1995.

B. the Attorny General Excerpts of Record Concurrs:

1) "Perhaps most significantly the testimony establishes there was no photograph of Appellants genitals nor of any thing else untoward" (ex. I, p. 21 (2-15), yet, Erin claims she took the picture, this is the crime Haynes committed? (Rt 276) (ex I, p. 276, 277, 278).

2) "Mr. Minch testified he examined the Photographs and there was no Picture of Appellant's genitals as Presumably there ought to be according to the Victims Account. and the victims mother herself corroborated this Assessment when she testified she saw the Photographs and Perceived nothing indecent." (ex I, p. 22).

C. Judges Statements to Innocense... No Criminal Activity Seen by anyone to Support the Conviction as Charged

1) The Honorable Judge Hayes States:

a. This was misdemeanor conduct, how important could it be if somebody is out of the country. (Ex. VII, 865 (14-15).

b. ..."Having Pictures that suggest you're taking them at a particular time or location or method designed to sexually arouse. And it sounds like you have no evidence that you can in good faith put on that says that's what occured here" (1 Rt 204) (O.P. ex 'L', p.204) (ex IV (9) p.204)

c. "[the] evidence... before the Jury... reflected essentially what [EB] said, In that everybody else [agreed]. I - we never saw any inappropriate pictures, including her mom". (ex 'I' COAO p.12 (21-23); (O.P. ex. 'H' p. 12 (21-23); (ex. VII, (S) p. 866 (6-11).

d. "This is an open case [unaware at that time it is now shown to be purged in 2003] with A warrant [shown now to be destroyed pursuant to gov. code sec. 68152 by 2001], and evidence existed, and as long as they wanted to Pursue the Warrant my reaction is they should have Protected the evidence... the culpable Party For not bringing them in would be the People who had them in this case, it's law enforcement" (ex III p. 682). (the Judge assigns no prejudice in error. the decission was based on the Failure to Disclose this case was in Fact closed, by the Prosecution.

e. "Erin did say; "I took the Photograph," everybody else said, we never saw those photographs"... [the Police had no recollection of the photos in evidence; were confirmed to be in evidence by 1/20/95 (See police report, 1ct 369); (ex IV(7) p.369). this evidence was purged in 2003. (ex II, P.3,4)

F. "the only testimony about the Photographs was they were innocuous which did not support Evin's Account (ex III p.20(9))

2. The Honorable Judge Makino

"there's a direct eyewitness for the defense that no such picture was in fact taken... and there are in fact pictures of the Pool Party" (ex I p.119); (1RT 119).

3. Court of Appeal Opinion (COAO)

a. [Mary] "saw nothing inappropriate in any of the pictures. In fact they were all pretty blurry and appeared to have been taken underwater for the most part. none depicted anything inappropriate, none showed Haynes or anyone exposing their genitals or engaging in any other sexual conduct." (ex I p.3, para 4); (COAO p.3 (line 19-22)

b. COAO p.12 (15-18) "More importantly both witnesses; a defense witness Minch [minch was called by the Prosecution] and a Prosecution witness [EB's mother] explained they did review the Photographs when they were developed (3 days later) and they agreed they depicted nothing inappropriate" (ex I p.12 (15-18)) In 1995.

4. U.S. Magistrate the Honorable Judge Paul L. Abrams

"the uncontroverted testimony [But this was disputed and Subverted by the D.D.A. at trial] by the only two testifying witnesses [Don the Photo Developer was not interviewed in 1995, not Available in 2014] to have viewed the Photographs, established that the photographs depicted nothing improper. Indeed one of the two witnesses testifying to that Fact was the victims own mother... the Contents of the photographs depicted no criminal or inappropriate activity (ex. I, R&R p. 21 (15-19)'; (see Appx. 4)

5. U.S. District Court Judge the Honorable Jesus G. Bernal

Order accepting R&R P. 2 (12-13) "the undisputed evidence at trial ... [the DDA did dispute it to the Jury] established that the photographs [the sole alleged criminal conduct] depicted nothing improper." (See Appx. 3, P. 2 (12-14)).

But, the DDA did not conceed this. Instead chose to dispute the evidance and discredit to impeach, much (Appx 8, attached gr. I (p. 1-7). Rebuttle is then A right. the loss of the evidence is Foreclosed by the delay, we now know the case was inactive and Purposefully Purged in 2003. this Fact Known by the Gov. was never disclosed, the case was closed since then, By any Standard these actions by the gov. compromised the Defense.

6. The Hon. Judge Hayes recognizes the Admittance of Prior bad act testimony convicted Haynes and States:

"the P.C. 1108 [prior bad act] evidence was powerful in this case and I don't know whats in the Jurions head but, I could say that maybe that was the Difference in what was a close case, in Fact enough time [3 days] I Started to wonder if maybe they were going to hang up, But, the 1108 evidence made a critical difference in this case (ex I, p. 867-868); (R+867-868 (21-1).

It is then reasonably probable without admitting the Prior inflamatory testimony in error as more PreJudicial than Probative, the Jury would have reached a different Verdict. Defenses were lost in 40 years. i.e. the testimony given at trial in 2014 did not match an excerpt from the investigator Report in 1995 [when evidence was still obtainable] It showed there was no touching or nude photos as claimed by Shannon in 2014 (ex I p. 301, para 5), from the 1983 incident.

MAgistrate Judge was then objectionably unreasonable in determining: "there is no reason to believe that the Jury would have reached a verdict other than the one it reached even if the trial court had curtailed Elizebeths testimony about the prior crime from 1979." (See R&R p. 37 (21-23). Police reports were also destroyed here.

For the Current 1995 offense

In AFFirming, The Hon. Jesus G. Bernal Abused his discretion when denying a unanimous Judicial Consortium establishing Haynes did not do this crime, so Alleged. the conviction then lies on the Prosecutions Failure to disclose and PreJudicial admittance of the Prior conviction in Flamatory testimony, unverifiable 40 yrs. later. this is most definately debatable & encourages Further Review, the Conduct is implausable

II. Defense Request to Produce Evidence of the Changing Documents used in Extradition was Denied

the Prosecutions knowing suppression of Evidence of a Proper Arrest Proceedings and illegal Extradition from the Philippines in the Face of a defense Discovery request, violates Due Process where evidence is Favourable to the Accused (moore v illinois 33 LED2D 706, 408, U.S. 786 (1972). Haynes was denied this (ex II p.1-2); (ex. IV (3) p.111 (19-22)

Instead the Prosecution Failed to disclose, created deception to obtain Jurisdiction, while at trial substituted Fact For Conciousness of Guilt Scenerio's, created out of the very delay, the Gov. is to protect us From. (i.e. p. 6-8 Supra); (ex. II p. 3-15) (see Appx 8, Atth. 1, gr. II-IV).

III. the Prosecutions Failure to Disclose Rendered the Conviction unconstitutional

Cites in the Record and Evidence brought For review point directly to the Prosecutions Failure to Disclose (i.e. phil. papers, Disposition & timeliness of the Changing Documents; Punged Case records, & evidence...), Violated Haynes Due Process as determined in Brady v. Maryland (1963) Supra). Suppression by the Prosecution of evidence [so stated] Favorable to an Accused violates Due Process when the evidence is material (see U.S. v Bagley 87 LED2D 481, 473, U.S. 667) and as here hinged Jurisdiction.

It is well Documented in the Conversation with Judge Hayes (ex III sec.'O' p.651-655) and one example of many that compromised the defense when the Prosecution "made up it's own Story" when it Failed to disclose material evidence of Haynes Arrest and Extradition, Foreclosed by the delay, enabled substitution of the Fact the gov. knew exactly where Haynes was, and purged the Files in 2003 and never Pursued him over the 20yr delay. It is unreasonable this was kept from the court. (See M.F.C. Statement of Facts p.11 #6)(Appx.8, Attch.5, p.11, #6)

According to the Hon. Judge Jesus G. Bernal as opined in motion Accepting R&R p.3 (16-20), petitioner Asserted the Prosecution committed: (See Appx.3):

1) Fraud by holding evidence of Petitioners Extradition (See ex II For Documentation); (Appx.8, Atth.2, ex.1-5).
2) Manipulated the trial Court minutes (See ex II, p.3, 4, 13a); (M.F.C. ex 1, p. 12-15).
3) Altering the Complaint & Arrest Warrant (See M.F.C. ex 1 p. 1-21); (ex II p. 3-15); (Appx.8, Atth.2, ex5, p. 7)
4) misstating and misconstrueing evidence (examples: ex. IV (8) p.654 (13-14); (RT 654 (13-14).

Clear & Convincing Evidence to these claims is with the court, was overlooked, is dispositive. (Appx.8, ex. VIII p. 1 to 25). The Court then unreasonably denied material claims that Infected the integrity of these Proceedings would out of necessity include the Prosecutions Failure to Disclose (Falling under Brady) violated Haynes right to A Fair trial.

this conviction lies on False Premise (U.S. v Agurs 49 LED2D 342, 427 US 97) where the Prosecution has a constitutional duty to volunteer exculpatory matter to the defense, even if not requested. (ex. III); (ex II (1))

IV. the Count made material Determinations of Fact based on False Premise and the Prosecutions Failure to Disclose (see ex. IV (1-9)).

throughout this Prosecution with impunity the Prosecution used the 20yr. Delay "itself is responsible for, to mis-state Facts to gain a strategic advantage, by Failing to disclose material Fact is clearly contrary to well established U.S. Supreme Ct. precedent Found in Mooney V Holohan 294 US. Defenses sought were compromised and any reasonable jurists would find it debatable that with out such conduct, by the Pro-secution the counts could have reached a different verdict, as shown, more Favorable to Haynes.

A. Determinative Facts based on False Premises were adopted by the District Count in error, Rendering the Conviction unconstitutional and void

1. Prior Bad Act.

Prior incident assertions (see M.F.C. Ground II(A)(4) p.24-30) adopted by the Dist Ct. from the Calif. Ct. of Appeal are not supported by any evidence (Appx8, Att. 1, statement of Facts p.11, #5), (Ground II(A)(6) p. 39-41); (ex IV (1); (ex. I, p. 301 para 5). Police investigator report from 1985 shows there was no touching, no nude photos, as claimed in 1983. At trial in 2014. Defences were then lost, prejudiced the trial.

The Dist. Court without considering the merits ruled "Pet. can not challenge the admissability of the Prior Crime evidence because it is a State law issue". Contrary to well established Fed. law petitioner can and did challenge the admittance violated Fed. Due Process as guaranted by the 5th, 6th & 14th Amendments to the U.S. Constitution (Holmes v Carolina 126 S.Ct. 1727 (2006) Duncan v Henry (1995) 513 US 364, (See supra I, #6)

California Court of Appeal

the Ct. of Appeal Falsely assumed the trial Judge did not know about the testimony of Elizebeth before making the ruling to admit the testimony and used this procedurely in error, for Denying Review (O.P. ex L' P. 139, 205); see COAO p. 18-19 (15-1); (ex. IV (1), P. 139, 205)

Failing to apply this material Fact in determining the Courts Doctrine: "we review the correctness of the trial Courts ruling at the time it was made, not by reference to evidence produced at a later Date." the Court then errored when declining review of this M.C.O.J. issue infecting the trial with undue prejudice, was a decision based on an unreasonable Determination of the facts (ex IV (1) p. 18 para 2 & 3); (ex IV (1) p. 139, 205).

2. the Case was closed by 2001/2003

the Dist. Ct. overlooked the trial Courts decision not to find preJudice was based on False Premise that this; "was an open case not a closed case!!" where they Purged evidence... this is an open case where they were still

Seeking [Haynes]." (ex. III 672 (8-26). But in Fact the warrant was destroyed by 2001 and this case was purged and closed in 2003. this is 12 years before Haynes arrest. the Case could not have been open nor active in 2014.

Judge Hayes rules on False Premise "It's an open case with a warrant... the FUPD should have protected the evidence!" (ex III p. 681-682); (3RT 682 8-11); (Supra p. 13 #d.) Surely if Judge Hayes had knowldge at that time (he did find the FUPD culpable), Plus the case was in Fact Purposefully Purged in 2003. He would more likely than not reached a different decision and found pre-Judice where even a minimum Amount would have meant relief (ex III p. 678-679).

3. the Gov. not Haynes is responsible for the 20yr. Delay

R&R p. 25 (9-10) mag. Judge: "Although petitioner insists that law enforcement deliberately caused the delay' by expending no effort in attempting to Pursue him, there is no evidence to support that allegation." Contrary to this finding (Appx 8, Att. 1, gr. II (A)(5); II (B); II (C); II (D) due diligence; VIII misconduct) there is un contrieventable evidence the gov. did cause the Delay and in fact they Put on absolutely no evidence they didn't (see ex IV(3)) (M.F.C included as Appx. 8, gr. I to IV, VIII, X).

the mere Fact the warrent was destroyed in 2001, & the case purged in 2003; no cases found in any O.C. Ct. by 6/22/2001; there was nothing to Pursue.

the Ct. of Appeal opinion is definitive in this matter the gov. made no effort to notify Haynes before or after he left for the Philippines, and did nothing (see COAO p.11 FN5); (ex IV (3) p.11 FN5), After that.

the Prosecution then waited 20 yrs. in error, is contrary to decision in U.S v Hooker 667 F.2d 286 (9th cir.); U.S McDonald 172 F. Supp 2d 941, means if there is a formal Extradition treaty, when the U.S. sleeps on its rights by not Seeking Extradition based on it's provisions the delay is attributed only to the gov. Regardless of the Pendency of local criminal charges.

the Hon. Judge Hayes clearly agrees that gov. had an obligation to Pursue the warrant and protect the evidence... was not done and the FUPD was Culpable (3RT 682); (see ex III, p.682 (22-24)).

4. Haynes is not responsible for the Delay Had no knowledge of A prosecution.

R&R p.25: the Dist. Court: "Petitioners Arrest is Attributed to petitioner himself specifically to his decision to leave the Country and his actions ensuring that his return to the U.S. in 2001 went unnoticed" this is completely False the court did not seek out the Facts or law.

A Preponderance of evidence is required of knowledge of A charge and intent to Avoid prosecution must be Shown to satisfy loosing the right to A speedy trial.

(Appx B, Atth. 1, pg. II (B), p. 44) Haynes was not hiding and in constant contact with U.S. & Philippine gov. officials over the 19 yr. delay; II(C) p. 48, Haynes did not flee and had no knowldge of a prosecution; II(D) p. 57, the gov. showed no evidence of Due Diligence to pursue Haynes, nor produced any justification as required why it did not. to the contrary the prosecutions failure to disclose shows the absolute opposite to R&R p. 25, Quoted above.

The gov. was solely responsible for the delay. there are no sanctions for Haynes unknowing of a prosecution living outside the country (U.S. v Wasney 529 F2D 1287 (9th cir); US v Duff (1996) 931 F. Supp. 1306, and fully supported in the Authority found in Moore v Arizona 414 US 25 1973; See U.S. v Heschelman (2013) 521 F.2d Apx 501).

The Ct. of Appeal opinion is dispositive in this matter: (COAO p. 11 Fn 5): "the trial court made no express findings he departed to avoid prosecution. the trial ct. also did not find the Police or Prosecution notified customs officials of Haynes warrant or to watch for his reentry, nor that either had attempted to locate Haynes in the Philippines or request Federal Authorities to extradite," (Ex IV (3) p. 11 Fn 5) (County of Orange v Ranger Ins. Co. (1998) 61 Cal App. 4th 795; See Slavic v Sequeira (9th cir. 2006) U.S. Dist. lexis 131507). the inquiry must focus on what the Gov. actually did in it's pursuit of Defendant and the reasonableness of the measure it took. In Haynes the Gov. did nothing.

In Haynes, the court errored in it's Finding, when it overlooked the Fact the prosecution merely waited 19 years to Arrest Haynes by then without Jurisdiction to do so. (Freeman v. upchurch (9th cir. 1997) U.S. App. lexis 14666) the degree of prejudice if any that must be shown is independant upon whether the State acted diligently or Negligently in bringing Haynes to trial. the later is the case Here.

It is shown by clear & convincing evidence Haynes did not hide the Families return to work in 2001 with the very same People involved in the case from 1995 (supra) (Appx8, Attch'1, gr. II(A)(7) p. 48-52; Statement of Facts, p. 14-16, #11-#12). minch even Commissioned a Criminal Record Search at that time - no cases were Filed in Aug O.C.C.t.

5. Statute of limitations.

R&R p.25 FN7 (21-24) the Dist. Court: "more over to the extent that petitioner contends that the S.O.L. had run on the crime... that contention fails because the State Court concluded that the applicable Calif. S.O.L. had not expired before petitioner was charged with the crime." This is False.

Contrary to this, the Ct. of Appeal determined without further inquiry, "It does not Appear defense Counsel asserted a S.O.L. defence and we express no opinion on this issue (COAO p.9 Fn4) (ex IV (5) p 9 Fn 4). Out of necessity this issue would have hinged on the expired and destroyed misdemeanor charging documents were recrafted in 2014 as untimely. Further inquiry was then required, and not Granted.

6. when any delay exceeds the SOL For a Simple misdemeanor offense it then attatches to the 6th Amendment right where PreJudice is Presumed to Compromise the Defense

R&R p.4 (3-5) The Dist Court: "the time in which to Prosecute [a misdemeanor] had long since expired before his Arrest. that the timeliness of a Criminal charge is A State law issue."

the Dist. Court declined review of this issue in error. Authority in wicconson v mitchell 508, 473, 483 1993 determined direct review of State court Judgement exceptions apply when there is reason to support that Fed. rights are improperly obstructed by the State Court, through it's interpretation or reinterpretation of State law, gives this court De novo Review (see Appx 8, Atth. 2, ex 5, P.7, misdemeanor listed 8/24/14 is Dispositive)

The Dist. Ct. determination this is merely a State law issue is then Contrary to Federal & State Authority where a State misdemeanor offense is also governed and Attaches to the 6th & 14th Amendments U.S. speedy trial violation arising out of a 20yr Delay, as in Haynes

the Point in which it becomes presumptively PreJudicial is 3 years. After which the delay is then presumed to affect the outcome of the trial (Appx 8, Atth 1, gr. IV p.72-81)

It is Seen by a preponderance of evidence and the Court officials Agree, the warrant was issued as a misdemeanor in 1985 and remained expired, is listed as a misdemeanor on 8/27/14, (see ex.II, sec.'C', p. 64(16-17)) Oddly this is one month after A recrafted Zeroxed Orange County "Felony" warrant was Faxed to the U.S. Embassy in Manila on 7/30/14. It cannot be both. Should concern the Court (App. 8, (2) gr. VIII p. 96-111); (ex.II sec.'W', p.2-4)

Federal law then requires that even an expired 1995 misdemeanor warrant in the system; destroyed in 2001; the case closed in 2003; after 20 yrs, prejudice would be presumed, when there was also absolutely no Due Diligence by the State to Pursue the case, even if it was active prior to 2001, see; (Stabio v Superior Court (1994) 21 Cal App 4th 1488); Serna v. Superior Court (1985) 40 Cal. 3d 239); U.S. v Aguirre 994 2d 1456). misdemeanor attaches to the 6th Amendment right to A Fair trial (ex.II' sec'C', p.64(16-17)

7. the Police had the Photos in evidence (DR. Jacket) and Purposefully Purged & closed the Case in 2003.

the Dist Court [incorrectly] Finds R&R p.21(13-15): "there is no evidence in the record to suggest that the Police played any role in the Purported Disapperance of the Photographs." (ex.I, p.21).

This finding in error, is objectionably unreasonable and is not supported by the evidence. Judge Hayes actually Determined, "the Culpable Party... In this Case is law enforcement." (Supra p.13, #d); (ex. IV (7) p.671 (5-8) Photos were booked into evidence.

"many" gave the photos to the FUPD (Rt 690); "many" Provided Photos to the Police (ex IV (7) p. 201 (25-26); they were Purged (Line 27); (Appx. 8, Attch. 5, Statement of Facts p. 9, #3). new evidence has Found the prosecution failed to disclose the records were purposefully purged in 2003. there is no more speculation by the D.D.A. to the Disposition. PreJudice is clearly shown from this misconduct. the FUPD had the photos in evidence (See ex IV, p. 369 (7); Appx 8, (1), gr. II(A)(1) p. 12); II(A)(2) p. 16). the evidence was material to the defense; the gov. is solely responsible for the loss. (M.F.C. Provided in Appx 8, Atth 1-4, 6).

8. The Dist. Court Abused It's discretion when it did not Act on It's own Findings, when taken in Context Show A clear Violation of Haynes Due Process has occured

The Dist. Ct. in error overlooked material Facts of Haynes Arrest that were Determinative, and as such is encouragement to Proceed Further: It knew:

a. "the Jury was not told he was accompanied by a U.S. marshall upon his return to the U.S." (See ex. IV (8), p. 5-6, Fn 2); (COAO p. 5-6 Fn 2).

b. "Haynes wife testified that her husband has been brought back August 24 [2014]." But Further testimony was Blocked by Judge Hayes (3rt 651-655) (ex III p. 651-655) and denied by the Prosecution (See ex. II p. 13); (O.P. ex. 'B', p. 1)

C. "It is not clear whether he had been deported or was extradited by U.S officials." Evidence the State didnot Act nor, had the count knowldge of any evidence [From the prosecutions Failure to Disclose] OF Haynes Arrest. the State did not act Diligently to Seek out Haynes when it could have & now covers it up, by ommission. this does not meet the Standard in County of Orange v Rangen Ins. Co. (1998). nor slavic v Sequeria (9th Cir. 2006, (Supra). Where PreJudice would be presumed from gov. Failure to Act.

9. The Alleged Victim's testimony Does not Support the Conviction.

Order Accepting R&R p.2 Fn 1 (22-28). the Count de-nied a claim of Actual innocence stating "peti-tioner has not however presented any evidence showing that the victims testimony was implausible." (see P.18 previously (27-14))

this unreasonable determination is not grounded in the evidence (Appx8, Attch.5, statement of Facts p.5-8 #1, p.8, #2; Attch.1, gr.I p.1-6). the evidence is absolutely implausible making Haynes alleged criminal conduct impossible (Appx.8, Attch.1, gr.1).

Facts

1) By every Judge; "that there were no inappropriate Photos", and by Judge Makino "there were photos of the Pool party". (ex I, p.119); (Rt 119); (O.P. ex J p.119). (See Appx.8, attch.1, Ground 1, p. 6 - A - C)

V. misconduct by the State making False Statements And Purporting False Evidence to obtain a conviction violates Haynes Due Process (see ex V)

Clear cites to the record show the Prosecution knowingly presented False evidence to the Judge and Jury violated Haynes Due Process Clause of the 14th Amendment to the U.S. Constitution.

the law has been established since Mooney V Holohan 294 US 103, 55 S. Ct 340, 79 LED 791 (1935). that the conduct of State Prosecuting officers may be grounds for finding A defendants rights to A Fair Trial violated and to Autherize the Federal Courts to grant writ of H.C. (see also: U.S. exrel V Wilkins (1963) 326 F.2d 135); (title 18 uscs 242; Punishment For wilful Deprivation of Constitutional Rights)

In Haynes the Prosecution obtained A conviction through the knowing use of False evidence known to be such by representives of the State and Permitted by them to go uncorrected must Fall under the Due Process clause of the 14th Amendment upheld in Napue V Illinois (1959) 360 US 264, 3 LED2D 1217 79 S Ct. 1173) when it is Found 1) the evidence was False 2) Prosecution knew or should have known Evidence was False 3) the evidence was material [to the outcome] (See Jackson V Brown (2008) 513 F.3d 1057, 1084-1085), this has been clearly shown in Haynes. In support see (ex V; ex II, Denying Discovery; ex. III, IV, Failure to Disclose, False Statements & Forged Documents).

VI. Right to A Fair and Speedy Trial.
(See Appendix 8, Attch. 1 Grounds II to IV)

A. the Barker v Wingo inquiry was never conducted.

Haynes 5th 6th & 14th Amendment rights to A Fair & speedy trial were overlooked. PreJudice was apparant. the 20yr delay for such misdemeanor [simple] conduct alleged violated this right well established in U.S. Supreme Court Authority, where it is understood some PreJudice is apparent after 8 1/2 yrs. (Doggett v U.S. (1992) 505 U.S. 657), to Presume the trial was compromised by the Delay,[4] then requires a Barker v Wingo (1972) in-quiry into the gov. culpability (i.e. clear & convincing material evidence of what the prosecution was hiding within the 20yr. delay they Failed to Disclose). (Appx 8, Attch 1, ground II(A)(1), II(A)(4), VIII p. 96-111). See examples: ex. II, III, IV, V, VII, as referenced in this motion for Reconsideration on Writ of Certiorari.

B. New Evidence showed Documents Purged, Changed and Hidden in All Fairness must be Determined thru an Evidentiary Hearing.
(see Appx 8, Attch. 3, gr. X)

Habeas Corpus Proceedings require an Evid. Hearing when Petitioners Assertions if Proven would es-tablish the right to relief. (totten v Merkle 137, F3d 1172 (9th cir. 1998). this is the situation here reconsideration is then necessary to correct the Dist. Courts errors.

Haynes has alleged facts [over looked] taken as

4) See Appx. 8, Attch. 4 (P. 5-9); U.S. v Mendoza (9th 2008) 530, F3d. 758, relief was granted on the same factual circumstances violating Haynes rights.

true would establish a basis for relief [i.e. prejudice; False claims; Failure to Disclose; gov. Abuse & Misconduct; Factual innocence (sufficiency of the evidence) were brought to the Dist. Court, now on Appeal, to issue COA. (reference Appx. 8, Atth. 6), Amended motion For COA. and Addendum to Amended motion For COA submitted 2/18/20. this was not Abuse of the writ, But, Due Diligence to uncover Proof of the Prosecutions misrepresentations and Failure to Disclose, now Presented.

Moreover because the Evidence determined by the Dist. Court to be uncontrivertable stating: "the Photos did not show any criminal nor inappropriate activity". Haynes right without further inquiry into the truth of the evidence, supporting the conviction, even at a minimum, when considered as only Equivacal Evidence, this right denied, was then violated; relief would be granted.

It is then debatable the order supporting the conviction without error would not support the constitutional requirments on which the Conviction stands.

Had the trial been held in 1995 on this sole allegation that did change over time (supra p.12(1-14)) (ex I p.296, 298) was testified to by "Erin" to be "A mistake". As such is unreliable at best when considering the rulings adopted by all the courts (supra, p.11-16) "no criminal activity", there is a reasonable possibility that in conducting an Evid. Hearing the result For Haynes would be Favorable.

It then Follows when the State made findings in error to claims adopted in the Fed. Dist. Court on these Facts Without conducting a Hearing [nor Barker inquiry], then the State Courts Fact findings are not binding on Fed. H.C. Haynes has shown this by clear and convincing evidence to be true (taylor v Maddox 366 F.3d 992, 1001 (9th cir. 2004)).

Haynes is entitled to an Evid. Hearing where he establishes merely a colorable claim for relief and has not been afforded one in State Court (Earp v. Ornoski (9th cir. 2005) 431 F.3d 1158, 1167).

VII. Judicial Bias resulted from Prosecutorial misconduct Produced unreliable findings

the only evidence to guilt or innocence of any Criminal Conduct "the Photos" established there was "no criminal conduct, nor inappropriate activity." this evidence was claimed "lost" in the Delay, was argued to give "no idea of the Disposition". But in Fact the case Files including the evidence, the Prosecution Failed to disclose was purposefully Purged in 2003. (see EX "II", P.4)

By 2014 a proper 4th Amendment Arrest Procedure was no longer Valid. Evidence was subsequently hidden in those 20 yrs it took to bring Haynes to trial. this Quagmire from the Procecutions Failure to Disclose evidence in this instance, Jurisdiction brought [Judicial] conflict regarding these time sensitive Documents at no fault to the Court. (see Appx. 8, Attch 2, & Exhibits, see ex VII For Judicial Uncertianty Based on false Premise.

The Petition for a writ of Certiorari should be Granted

Respectfully Submitted

Date 7/28/21 / 6/24/21

Luther Pete Haynes

Footnote 3 from Page 8 (Cites to the Record) Exhibits:

1) Ex. IV (3) COAO, P. 11, Ftnt 5
2) Appx-8, Attch 1, gr II (B), P. 44-47
3)
4) Ex. II, P. 15 (ex. 'w' P. 6)
5) Ex. II, P. 15 (ex. 'w' P. 5)
6) Ex II, P. 15 (ex. 'w', P. 6)
7) Ex II, P. 15 (ex. 'w', P. 6)
8) Appx. 8, Attch 1, gr. II (B), P. 46
9) Ex. II, P. 13 (para 7) contrast to. Ex II, P. 15 (ex. 'w', P. 2)
10) Ex II, P. 15 (ex. 'w', P. 2) Orange County Altered Warrant Faxed to Manila.
11) Ex IV (3), P. 11, Ft. nt. 5; Ex II, P. 15 (ex. 'w' P. 7).
12 Ex II, P. 15 (ex. w. P. 7)
13) Ex. II, P. 15 (ex. w, P. 2) Dated 7/30/14, P. 4 warrant Faxed the Same day
14) Ex II, P. 15 (ex. 'w', P. 1-13).
15) Ex II, P. 15 (ex w. P. 2)
16) Ex II; P. 63 (13-14); P. 64 (16-17), (20-24); P. 71 (19-22); (Ex. 'C' P. 14)
17) Appx 8, Attch. 2 and 6; Ex II, P. 4, 5, 6-7.