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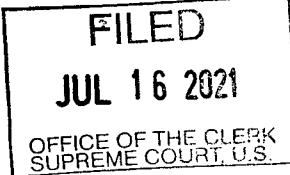
IN THE  
SUPREME COURT OF THE UNITED STATES

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JAMES PLAS SAMS,  
PETITIONER,

v.

NEIL McDOWELL, Warden,  
RESPONDENT.



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ON PETITION FOR WRIT OF CERTIORARI TO  
THE COURT OF APPEALS FOR THE NINTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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JAMES PLAS SAMS  
No. BB9787  
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## QUESTIONS PRESENTED

1. The State may not selectively deny its protective services to certain minorities without violating the Equal Protection Clause. Petitioner's wife admitted on video tape to attempting to murder him in his sleep by pinning him down and crushing his windpipe. Police officers omitted the attempted murder from reports, fabricated a statement from Petitioner that he was not choked, along with other evidence. Did the officers' conduct violate the Equal Protection Clause as gender discrimination and on a class of one equal protection theory?
2. A criminal defendant has a due process right to enforce the terms of his/her plea agreement. In 1990 Petitioner entered an agreement with the State to plead guilty to a juvenile adjudication. The law, Cal. Welf. & Inst. Code §203, promised a juvenile adjudication "shall not be deemed a conviction of a crime for any purpose." In 1994 the State changed the law to make adjudications into convictions. As existing law is part of every contract, did the change in the law breach the plea agreement and violate the Contracts Clause?
3. The Constitution, Art I §9, cl. 2, prohibits suspension of the writ of habeas corpus. The District Court's resolution of Petitioner's equal protection and Santobello claims were contrary to State, Ninth Circuit, and Supreme Court binding authority. Similarly, the Court of Appeals denial of a Certificate of Appealability was contrary to Slack v. McDaniel. Did the lower courts' rulings contrary to all binding authority constitute an unconstitutional suspension of the writ of habeas corpus?

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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 A 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 B 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 \_\_\_\_\_ 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.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. Const., Art I, §10, cl. 1

No state shall...pass any...Law impairing the Obligation of Contracts.

### U.S. Const., Art I, §9, cl. 2

The privilege of the writ of habeas corpus shall not be suspende

### California Welfare & Institutions Code §203

An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.

### California Penal Code §667(d)(3)

A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for purposes of sentence enhancement if,,

### STATEMENT OF THE CASE

On April 12, 2016, police arrived at Petitioner's home and discovered that his wife had a black eye. Officers arrested the Petitioner for domestic abuse. Immediately thereafter at the scene the police spoke to a neighbor Jessica Boyd who told the police that she had never seen Petitioner abuse his wife, but that she had always seen the wife abuse him. Boyd further told them how she had witnessed the wife almost kill the Petitioner by hitting him in the head with a rock.

Later the police interviewed Petitioner's wife on video and she explained that while Petitioner was asleep she straddled him with her whole body, pinned down his arms and began crushing his windpipe while stating "I'm Killing you." Officers omit both Boyd's and the wife's statements from the police reports.

Petitioner was then interviewed on video tape and he told police he was awakened pinned down being choked to death. He further told them once he got an arm free he struck his wife in the eye to get free. Petitioner further told officers to speak to several other officers as the wife had twice before made false calls proven to be untrue. Instead the officers fabricated a statement from Petitioner that he was not choked and several other false admissions not contained in the video interviews.

Petitioner represented himself during a jury trial and was found not guilty on three charges, but guilty on two. The prosecution alleged an enhancement for a juvenile adjudication from 1990 as a sentence enhancement. Petitioner objected and contended that use of the adjudication violated the prior plea agreement and violated the Contracts Clause.

The trial court agreed that the change in the law codified in the three strikes law, Cal. Penal Code §667(d)(3), making juvenile adjudications "convictions" "destroyed a substantive right of the 1990 bargain: that the juvenile adjudication would never be deemed a conviction of a crime for any purpose..." as promised in Cal. Welf. & Inst. Code §203.

However, the trial court did not apply California contract law to the resolution of the claim.

In the District Court neither the Respondent nor the court would address the undisputed facts or State or Supreme Court binding precedents on the equal protection claims or Contracts Clause claims.

The Ninth Circuit panel denied a Certificate of Appealability even though not only could reasonable jurists disagree, but the rulings were contrary to all binding authority.

Petitioner petitioned for a hearing en banc and preserved an argument that the panel ruling violated the Suspension Clause of the Constitution.

## REASONS FOR GRANTING THE WRIT

I. The Court of Appeals approval of the archaic and stereotypic notion that males and not females are domestic abusers constitutes gender discrimination violates the Equal Protection Clause and is in conflict with this Court's decisions under Sup. Ct. R. 10(c)

Amy Cooper, the woman that made a false call against a black man the day George Floyd was killed has sparked national outrage against so called "Angry Karen". On the T.V. show charmed the Petitioner heard the term "0 to Karen in 60 seconds" used.

The Equal Protection Clause safeguards against invidious classifications such as race, gender, religion and other arbitrary classifications. Wayte v. United States, 470 U.S. 598, 608 (1985) "[T]he test for determining the validity of a gender-based classification is straightforward, it must be applied free of fixed notions concerning the roles and abilities of males and females." Miss. Univ. for Women v. Hogan, 458 U.S. 718, 725 (1982) The government must show that gender-based actions serve "important governmental objectives and that the discriminatory means employed are substantially related to those objectives." United States v. Virginia, 518 U.S. 515, 533 (1996).

There must be an important interest today, for "new insights and societal understandings can reveal unjustified inequality... that once passed unnoticed and unchallenged." Sessions v. Morales-Santana, 198 L. Ed. 2d 150, 163 (2017). Here, that unnoticed inequality is that males suffer domestic abuse and selective enforcement of the law occurs.

To prevail on an equal protection claim in this regard Petitioner must show both discriminatory purpose and discriminatory effect.

Wayte, 470 U.S. at 610. Discriminatory purpose "implies that the decisionmaker...selected or reaffirmed a particular course of action at least in part 'because of', not merely 'in spite of' its adverse effects upon an identifiable group."

In this matter the officers' omission that Boyd had always seen Petitioner abused by his wife, omission that wife attempted to kill Petitioner, and fabrication that Petitioner said he was not choked showed a clear discriminatory purpose based on gender.

To establish discriminatory effect, Petitioner must show that other similarly situated individuals could have been, but were not prosecuted. United States v. Armstrong, 517 U.S. 456, 470 (1996). Petitioner's wife clearly admitted to attempting to kill him on video while he was asleep, and could have been prosecuted.

Similarly, this Court's "class of one" equal protection ~~precedent~~ precedent Village of Willowbrook v. Olech, 528 U.S. 562 (2000) (per curiam) requires Petitioner to show that he was: (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100) (101) (102) (103) (104) (105) (106) (107) (108) (109) (110) (111) (112) (113) (114) (115) (116) (117) (118) (119) (120) (121) (122) (123) (124) (125) (126) (127) (128) (129) (130) (131) (132) (133) (134) (135) (136) (137) (138) (139) (140) (141) (142) (143) (144) (145) (146) (147) (148) (149) (150) (151) (152) (153) (154) (155) (156) (157) (158) (159) (160) (161) (162) (163) (164) (165) (166) (167) (168) (169) (170) (171) 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II. Petitioners prior plea agreement was breached and a change in law violated the Contracts Clause of the Constitution.  
The decisions are in conflict with this Court's decisions under Sup. Ct. R. 10(c)

In 1990 Petitioner was induced by the prosecution to waive his constitutional rights, admit a juvenile adjudication, and in exchange he would be tried as a juvenile and would not have a conviction on his record. This was consistent with clearly established law at the time, Cal. Welf. & Inst. Code §203:

"[A]n order adjudging a minor to be a ward of the court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."

It is well settled that existing applicable law is part of every contract, the same as if expressly referred to or incorporated in its term. Farmers Bank v. Fed. Res. Bank, 262 U.S 649, 660 (1923); Norfolk & Western Ry. Co. v. Amer. Train Disp. Ass., 499 U.S. 117, 130 (1991), "Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into it and form part of it, as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge." Id.

"Plea bargains are essentially contracts." Puckett v. U.S., 566 U.S. 129, 137 (2009). And the Contracts Clause applies to any kind of contract. Sveen v. Melin, 138 S. Ct. 1815 (2018).

Accordingly, the Contracts Clause provides that "[n]o state shall...pass any...Law impairing the Obligation of Contracts."  
U.S. Const., Art. I, §10, cl. 1.

Four years after Petitioner entered the contract with the State California Penal Code §667(d)(3) was enacted that made juvenile adjudications "convictions". This substantially impaired Petitioner's contract.

The trial court agreed that Petitioner's plea was breached, but did not apply contract law to the resolution of the claim. This Court's precedent require a state court plea agreement to be interpreted under state contract law. Ricketts v. Adamson, 483 U.S. 1 (1989). Contrary to the law and facts the District Court held, "the state court's rejection of Ground one [plea breach] was not contrary to, or an unreasonable application of, clearly established federal law...". (R&R at pp. 21). The District Court then disregards California Supreme Court precedent directly on point:

"[T]hus, even though, as we explained, California law does not hold that the law in effect at the time of the plea agreement binds the parties for all time, it is not impossible the parties to a particular plea bargain might affirmatively agree or implicitly understand the consequences of a plea will remain fixed despite amendments to the relevant law."

Doe v. Harris, 57 Cal. 4th 64, 71 (2013). "Retroactive application of a statute may be unconstitutional if it...impairs the obligation of a contract." Doe, at p. 68.

Accordingly, this Court has held "the Constitution discourages retroactive lawmaking in so many ways" such as..."laws impairing the obligation of contracts...". Opati v. Republic of Sudan, 140 S. Ct. 1601, 1607 (2020).

In short, Petitioner has a due process right to enforce the terms of his plea agreement. Santobello v. New York, 404 U.S. 257 262 (1971). Under California contract law, a contract must be interpreted so as "to give effect to the mutual intentions of the parties as it existed at the time of contracting." Cal. Civ. Code §1636. Even if there were ambiguity, which there is none, it must be resolved in Petitioner's favor. Buckley v. Terhune, 441 F.3d 688, 698 (9th Cir. 2006) (en banc).

The lower court's rulings are contrary to law in their entirety and have "so far departed from the accepted and usual course of judicial proceedings,...as to call for an exercise of this Court's supervisory power."

### III. This Court has jurisdiction to review the denial of a Certificate of Appealability

In Hohn v. United States, 524 U.S. 236 (1998), this Court held that, pursuant to 28 USC §1254(1), the United States Supreme Court has jurisdiction, on certiorari, to review a denial of a request for Certificate of Appealability by a circuit judge or panel of a Federal Court of Appeals.

In Miller-El v. Cockrell, 537 U.S. 322 (2003), this Court held "A prisoner seeking a COA need only demonstrate a substantial showing of the denial of a constitutional right."

Here, not only has Petitioner shown a substantial showing of the denial of a constitutional right, but also that the rulings below are contrary to binding authority.

"Summary reversal does not decide any new or unanswered question of law, but simply corrects a lower court's demonstrably erroneous application of federal law." Maryland v. Dyson, 527 U.S 465, 465 n.1 (1999).

IV. Does the lower courts' rulings contrary to all binding authority constitute an unconstitutional suspension of the writ in violation of the Suspension Clause of the Constitution, Art I §9, Cl. 2?

This Court in Boumedine v. Bush, 553 U.S. 723 (2008), held that the Suspension Clause is rooted in the framers' first-hand experience "that the common-law writ all too often had been insufficient to guard against the abuse of monarchial power."

As Justices O'Connor and Scalia said in INS v. St. Cyr, 533 U.S. 289, 337 (2001):

"[T]o suspend [in Law] signifies a temporal stop of a man's right. This was a distinct abuse of majority power, and one that had manifested itself in the framers experience: temporarily but entirely eliminating the 'priviledge of the writ' for a certain geographic area or areas, or for a certain class or classes of individuals."

Petitioner as an advocate for many pro se litigants under this Court's directives in Johnson v. Avery, 393 U.S. 483, 490 n.11 (1969), can attest that type of practice is the norm and not an isolated incident. Many pro se litigants are denied meaningful access to the courts. Justice and equality would be served by this Court's furtherance of the law in this area of habeas corpus jurisprudence.

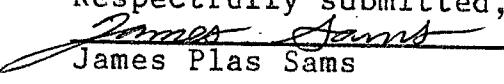
## CONCLUSION

The questions presented each present issues of national importance:

- (1) The equality of the sexes in the enforcement of the laws is of current an national importance. As Justice Ginsburg said, "Men and women are of equal dignity and should be equal under the law."
- (2) The States ability to retroactively impair the obligation of contracts is of national importance, especially in the context where a citizen waives constitutional rights in the reliance on the contract.
- (3) The Constitution's insistence that the 'Great Writ' not be suspended is of national importance and vital for the vindication of the violation of constitutional rights.

According, it is respectfully requested that the Court grant the petition for writ of certiorari.

Dated: 06/20/21

Respectfully submitted,  
  
James Plas Sams  
Petitioner in pro se