ORIGINAL

No. 21-5470

IN THE SUPREME COURT OF THE UNITED STATES

ALEKSYS LOMELI-GARCIA, ET AL, PETITIONERS

VS.

DAVID SHINN, RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

AUGUST 16, 2021

Aleksys Lomeli Garcia, # 273617

In Propria Persona

Arizona State Prison

Safford Complex, Tonto Unit

896 South Cook Road

Safford, Arizona 85546

RULE 10 QUESTIONS FOR CERT.

Aleksys' requests for a C.O.A. were denied by both the District Court and by the En Banc Ninth Circuit. This Petition for Certiorari timely follows and raises the following grave 2244(c) Suspension Clause and Herrera, infra, questions.

(1). Did the concealed 28 U.S.C. 2244(c) facts cause this Court to unwittingly Suspend the Writ of Habeas Corpus for all Ariz. indigent prisoners when it decided Casey, infra, in 1996, and did those factual omissions equate to fraudulent material representations; which would justify this Court's rare exercise of its inherent powers to remedy frauds that were perpetrated upon the Court by a Party, Chambers, 501 U.S., AT 44, 2244(d)(1)(B).

(2). Could reasonable Judges debate, Slack, infra, whether or not this 1996 Court's directions to violate the Suspension Clause. Were the root cause that enabled Ariz. in 1997, to Suspend over 10,000 indigent prisoners' rights to file for the Great Writ? While further debating whether or not the 2020 lower courts were simply following this Court's Suspension Clause violation directions and intentions; when they likewise errored by Suspending this Court's Whitmore, infra, "Next Friend" and 2nd Circuit Court Preiser, infra, class action filing rights for indigents? Assuring that the indigents could have no method to properly file for the Great Writ of Habeas Corpus on their own or by another next friend person as this 1996 Casey Court gave the appearance of intending?

(3). Could reasonable judges debate the lower courts made-up 28 USC 2244(d)(1)(B) legal standard which requires proof of the indigents efforts to overcome the State's conceded unconstitutional obstacle to filing. Their made-up Schlup and Perkins, infra, legal standards which require the same proof, and their new 2244(d)(1)(D) legal standard which conflicts with 10th Circuit law by requiring indigents to timely discover a claims Supreme Court legal basis even when the prison has intentionally made that legal basis and its material facts "unavailable" to the indigent, to forbid indigents from complying with their 2244(d)(1) filing duties?

(4) Could reasonable Judges debate, Slack, infra, the lower Courts decisions to accept all Aleksys' Suspension Clause facts, which proved this Court and Ariz. had forbid him from timely filing for the Writ. Further accepting his facts that this Court and Ariz. made the Supreme Court legal basis and material facts for his 4 grounds "unavailable" to Aleksys so he could not file for the Writ. Then failing to apply this Court's unavailable claims, Carrier principle, or Holland, equitable tolling principles, to this uncontested and accepted factual pattern, under their 28 U.S.C. 2244(d)(1)(B)(D) constructions?

(5). Could reasonable Judges debate, Slack, infra, the lower Courts decision to rely upon unsworn state record facts which both Parties agreed are false facts. Rather then the material under oath new facts, which both Parties agreed were true and had corrected the false record facts. As being error when deciding a scientifically validated Herrera, infra, and Perkins, infra, Due Process and freestanding claim of substantive innocence?

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LOWER COURT DECISIONS

In Aleksys Lomeli-Garcia V. David Shinn, No. CV 19-08199-PCT-DWL(DMF), the Dist. Court suspended the 28 USC 2242 Next Friend class action filing right, which sought to remedy the State's Suspension Clause violations. Finding the bedrock Habeas right conflicted with Ninth Cir. 28 USC 1983 judge made law that forbids laymen from filing such civil class actions, (See Appendix #1). While the Ninth Cir. Panel and En Banc Courts declined to intervene and restore this fundamental Habeas corpus filing right by issuing a Writ of Mandamus, (App. #2). The Magistrate then suggested dismissing Aleksys' first habeas on untimeliness grounds, (App. #3), to which Aleksys objected, (App. #6). Although the Dist. Court later adopted the Rep. and dismissed the habeas petition while denying a requested C.O.A., (App. #4). The Ninth Cir. Panel and En Banc Court, then denied Aleksys' request for a C.O.A., so the 28 USC 2244, 2254 Suspension Clause Violations, Substantive Innocence and other claims could be appealed and remedied (App. #5). This Petition timely follows and attempts to restore the indigents' equal protection right to apply for the great writ and have both sentencing and freestanding affirmative Innocence claims adjudicated on their merits.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this Petition For Certiorari pursuant to 28 U.S.C. 1254(1), Rule 10, Supreme Court Rules, Slack V. Mcdaniel, 529 U.S. 473 (2000), and its inherent power to remedy a fraud that was previously perpetrated upon the 1996 Court by a Party, Chambers V. Nasco Inc., 501 U.S. 32 (1991)

SUSPENSION CLAUSE QUOTE

Article One, Section Nine, Clause Two of the United States Constitution, is central to this Petition, and reads as follows:

"The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it."

I. FACTUAL STATEMENT OF THE CASE:

Aleksys supports this Petition for Certiorari with the following facts which should provide compelling reasons to restore the suspended writ of habeas corpus to indigent Ariz. prisoners and to have his claim of substantive innocence decided upon its uncontested material facts merits.

A. Concealed 2244(c) Suspension Clause Facts.

After a hearing, the Casey v. Lewis, 834 F. Supp. 1553 (Ariz. 1992), court issued a statewide prison law library injunction, based upon the record which was before it in 1992. That holding was then affirmed in Lewis v. Casey, 43 F.3d 1261 (9th Cir.1994), based on the 1992 record before that Panel. Then, in Lewis v. Casey, 514 U.S. 1126 (1995), this Court granted Cert. based on the 1992 record which was before it, and Ariz. had 45 days thereafter, to file their brief on the merits. After said merits briefing, this Court dissolved the overbroad injunction, based on the 1992 record, Lewis v. Casey, 518 U.S. 343 (1996).

In 1992, Ariz. indigent prisoners were not required to brief the State or Federal Habeas Corpus Courts, as to the Supreme Court legal basis for their claims, as both Rule 32, Ariz.R.Cr.P., A.R.S. § 13-4235 (both eff. 1989), and 28 U.S.C. 2254, had no such mandatory filing requirements, and Indigents could simply file a facts only petitions when needed.

Unbeknownst in the Casey Court record, in 1994, Arizona amended their State Habeas Corpus filing laws. Implementing both a 30-90 day S.O.L., and a mandatory filing requirement that the indigent defendant must identify the federal legal citations, the legal points, and the authorities which provide the legal basis for his federal claims, and would entitle the indigent to relief, Rule 32.2, Rule 32.4, Ariz.R.Cr.P., A.R.S. § 13-4232, 13-4235 (all eff. 1994). Petitions which failed to comply with these mandatory filing duties were to be dismissed for failing to comply with the State's procedural laws, (id). By contrast, in 1992, no such requirements existed.

However, in 1994, Ariz. Legislators and their supreme court knew these new mandatory filing laws posed no undue burden upon the indigent defendants who had full access to all of this Courts precedential law opinions, as well as all the lower federal courts published holdings which applied this Court's Supreme holdings, principles, and rationale, Casey (1994), supra.

Unbeknownst in the Casey Court record, on 4-24-96, the AEDPA was signed into law and mirrored the Ariz. changes. It imposed a one-year S.O.L., and required indigents to exhaust the Supreme Court legal basis for a claim, so that the State courts had a fair opportunity to consider and apply this Court's holdings, principles and rationale, when deciding the Constitutional claim before them, 28 USC 2244, 2254, (1996).

At that time our Congress, like the State Congress, knew this imposed no undue hardship upon the indigent prisoners, as every State prisoner in the Nation had either full access to all of this Court's published holdings or

competent legal advice on those legal citations, so these mandatory filing duties, again posed no undue burden upon the indigents, as Bounds v. Smith, 430 U.S. 817 (1977), was the Law of the Land.

Collectively, these new State and Federal Habeas Corpus filing laws, mandated that the defendants promptly submit the Supreme Court legal basis for a claim to the Habeas courts and to support the claim with those facts which were material to the cited precedential legal basis. So that those courts were given a fair opportunity to apply this Court's precedent to the material facts which were before them.

However, Ariz. did not brief this 1996 Casey Court on these intervening changes in the Habeas Corpus mandatory filing laws. To effectively access the Habeas courts, prisoners now had to have direct access to this Court's precedential laws that proved the claims legal basis and identified which of their facts were material and had to be filed with the courts.

Put another way, prisoners were forbidden from filing court form only petitions which had no points and authorities that identified their relied upon Supreme Court legal citations, and that identified for them, their relied upon material facts. As such filings would now be dismissed, A.R.S. 13-4235 (1994), 28 USC 2254.

When this 1996 Casey Court suggested Ariz. implement a court forms only system, based on the 1992 record that was before the Court. It was unwittingly suggesting Ariz. suspend the Writ of Habeas Corpus for indigents. As unbeknownst to the Court at that time, such a system would forbid indigents from complying with their mandatory Habeas Corpus filing duties.

This sage Court has a long history of protecting the Habeas Corpus Writ, and the Court would never knowingly Suspend the right to apply for the Writ --- unless fraudulent acts were perpetrated upon the Court. Aleksys asserts that when Ariz. failed to notice this Court that they had amended their State Habeas Corpus filing laws, which now required points and authorities to file a petition. That omitting this material fact along with the AEDPA intervening material fact --- equated to a fraud via omission, as evidenced by this Court's suggestion Ariz. impose a court forms only system which would equate to Suspending the Writ.

When sage Courts read the 1996 Casey, court forms Opinion, they are aware that 13-4235 (1994) and 28 USC 2254 (1996), both predated that Casey holding. Which could only mean the Court would no longer protect the Writ from State erosions.

B. Innocence And Habeas Suspension Case History:

Between at least 4-20-11 and 4-30-11, 19 yr. old Aleksys was suffering from a chemically induced criminal psychosis, which his Science expert has appropriately labeled the Hannibal Lector Behavior psychosis (HLB), (App. #8). This HLB psychosis was induced when Ariz. allowed Aleksys to be secretly dosed with new psychoactive synthetic chemicals (NPS), with no notice, no warning, and without his express foreknowledge or consent (id). Ariz. has conceded to all of these chemically induced insanity facts, as well as the fact that the state record substance use patient history facts were inadvertently falsified, and that Ariz. did not know Aleksys true substance use facts history until 2019, (App. #11).

Therefore, the Parties in this case do not dispute the fact that Aleksys remains imprisoned for his involuntary HLB criminal psychosis which he suffered after Ariz. allowed him to be secretly dosed with NPS chemicals that are well known to chemically induce temporary insanity and a well-known HLB criminal psychosis, (App. #8).

Ariz. has further conceded, and all the lower courts have accepted as true, the fact that Casey, supra, and D.O. 902, had forbidden Aleksys from receiving any notice of his four grounds Supreme Court legal basis and their material facts. Accepting the fact that due to this lack of notice, all four grounds legal basis and their material facts remained unavailable to Aleksys from 2012 until his chance 2019 encounter with Medicolegal Consultant Holcomb, as will be detailed in the next subsection.

On 4-30-11, in the early morning hours, Aleksys struck up a friendly conversation with Police while getting gas for a stolen vehicle his HLB psychosis made him think he had not stolen. He then drove to a nearby park where his psychosis caused him to see the trees moving (walking). Police then arrested Aleksys for his accomplice role in his absconded Alpha male codefendants two murders, house robbery and stolen vehicles. Shortly after his arrest police placed Aleksys on suicide watch due his bizarre behavior, whereat he slept for 3 days until the secret NPS chemicals he had unknowingly consumed were purged from his system, and his chemically induced psychosis abated.

Aleksys was interrogated by Police and confessed to all of his criminal acts. Providing police with very detailed facts as to the crimes. Many of these facts were unknown to police at the time of the confession, but later verified by police as being true. Barring only one single fact. Aleksys informed police he and the murdered female had smoked "weed" hours before her murder, yet the autopsy blood work proved there was no signs of cannabis in her

system. Neither the police, the State, or Aleksys lawyers, bothered to question him on this single inconsistent fact from his confession, when all his other facts had proven true. Until his Science investigator quizzed him on this fact, which surprisingly proved true (App. #8, #11). As teenagers such as Aleksys, commonly referred to legally inhaled incense fumes --- as legal weed, (id), which was the common street name given to the legal incense.

On 5-5-11, by virtue of the 6th/14th Amend., U.S. CONST., Accusation and Due Process Clauses, Ariz. indicted Aleksys for his accomplice role in the murders, robberies, and car thefts, and on 5-9-11, he was arraigned on those charges. At no time did Ariz. every file their mandatory notice for seeking the death penalty. Since no death penalty notice was filed and the time frames for doing so expired, this process noticed Aleksys he faced either concurrent 25 yrs. to life sentences, or concurrent aggravated Natural Life sentences.

While Ariz. can enhance those mandated, A.R.S. §13-712 concurrent sentencing terms, by enhancing their 6th Amend. Accusation and charging A.R.S. § 13-711, so the judge is empowered to impose enhanced consecutive sentencing terms. Ariz. made the informed decision to not empower their court to do so.

Subsequently, Ariz. offered a plea agreement which stated Ariz. would not seek the death penalty, if Aleksys admitted to his accomplice role in the double murders his codefendant had committed. Aleksys attorney advised that there were no defenses to either the murder charges or the death penalty and that for these reasons Aleksys should accept the plea offer, (Dist Ct. Doc. #2, Exh. G, counsel signature confirming advice).

On 2-2-12, to avoid death, Aleksys trusted counsels' advice and accepted the plea agreement, as did the court. In doing so, Aleksys noted the plea verbiage authorized consecutive sentencing which his indictment did not. However, since his counsel Mr. Nielson had never provided him with any of the court defense files, Aleksys assumed Ariz. had filed some document which authorized the court to enhance the indictments noticed punishment, and further assumed the enhanced sentencing terms might only apply in certain situations, such as when the victim was a minor, which was not his case. Although, the plea agreement did not notice any authority for enhancing the concurrent sentencing terms.

On 7-13-12, Aleksys attended his sentencing hearing and had still not seen any of his defense files, which his new sentencing counsel Mr. Cates retained on his behalf. At this hearing the court imposed two consecutive 25 to life sentences, which equated to a single aggregated 50 yrs. to life sentence. However, the court did not disclose its authority for enhancing the sentences with consecutive terms.

While the court advised Aleksys of his 90 day right to file a state Rule 32.4, Ariz.R.Cr.P. notice. His counsel Mr. Nielson had advised Aleksys not to do so, as this would make him eligible for the death penalty again and Mr. Cates had stayed silent on the topic by giving no legal advice on whether or not to file and seek a fundamental error review.

About 8-29-12, Aleksys was in prison when his former counsel Mr. Cates sent him all his defense files which he had never seen before. Since he still had until about 10-14-12, to file his initial PCR Notice. Aleksys quickly searched these files looking for the document Ariz. would have filed which disclosed their statutory or other authority, which would have authorized the court to impose enhanced consecutive sentencing terms.

While Aleksys had no legal training whatsoever and knew nothing of law. He observed that his indictment noticed all the penalty statutes except the consecutive sentencing statute and recalled that during all his multiple 9-12-11, 10-18-11, 12-13-11, 1-24-12, and 2-2-12, status conference hearings. Ariz. repeatedly referenced their duty to file a death penalty notice if they desired that penalty to be imposed. Therefore, Aleksys presumed that they might have some kind of legal duty to file the statute which authorized the enhanced sentencing terms his plea court had imposed. However, no such statute or other authority appeared anywhere in his defense files and no such statute was charged in his original indictment.

During his review, Aleksys also found that the Dr. Weller psychiatrist report had misreported his substance use history prior to the acceptance of his plea. As had the Mrs. Walton, presentence report which followed suit after the court accepted his plea. Moreover, his defense counsel Mr Cates sentencing memorandum and its substance abuse expert report, had likewise replicated those errors. These documents had all misreported his legal substance use as illicit drugs, due the authors confusion over the teenagers common street names for legal substances. (Aleksys Science expert verified that this linguistic confusion was reported upon in published med. studies. App. #8).

However, Aleksys could not grasp the legal relevancy of these misreporting errors and the lack of penalty statute error, as D.O. 902 specifically forbid him from conducting any type of general or specific legal research into the legal relevancy of these discoveries and forbid him from obtaining any legal advice on the possible claims, (Dist. Ct. Doc. #2, Exh. B, D.O. 902.01.1.3, 902.03.1.2.2.1). This policy forbid Aleksys from being noticed as to his contemplated claims Supreme Court legal basis, or what facts might be material to said contemplated claims

legal basis. While state law forbid the filing of state habeas petitions which had no cited legal basis, A.R.S. 13-4235, State v. Harden, 228 Ariz. 131, 134 (App. 2011)(counsel not appointed and Rule 32.4 notice dismissed when no legal basis cited for claim).

Since the prison provided no method for Aleksys to be noticed of his contemplated claims legal basis or their material facts, and no method to obtain legal advice on these contemplated claims. He asked his family to hire a lawyer who could conduct basic legal research into his claims or provide basic legal advice on their viability. However, the family could not afford the cost, (Dist. Ct. Doc. #2, Exh. E)(App. #16).

Moreover, nowhere in the prison library or the available D.O. 902 resources, is notice given that the 902 policy itself, could be challenged in a federal Habeas Corpus petition. As the 28 USC 2254 annotated code does not adequately notice this 2254 right, and the Ariz. A.G. has legally advised the Ariz. prisoners in public records (App. #17), that 902 may not be challenged by way of Habeas Corpus, only by way of 28 USC 1983.

While affluent prisoners can still purchase their basic court access legal research tools or lawyer legal advice, and then competently exercise their habeas corpus filing rights in that manner. D.O. 902 forbid Aleksys from doing so due his poverty. Knowing of no legal basis for his contemplated claims, or what their legally relevant material facts would be, Aleksys allowed his time limit for filing his initial PCR appeal to expire.

Nearly a year later, a fellow prisoner misadvised Aleksys that even if he didn't know the legal basis for his contemplated claims, he could still file a Rule 31, Ariz.R.Cr.P, notice of appeal, and move the court to review his case for fundamental error. As this would stop the clock before his 28 USC 2244(d)(1) one year S.O.L. expired. While the state appellate court might reveal the secret legal authority for his consecutive sentence terms or the legal basis for his other contemplated claim. While Aleksys did not fully trust this layman legal advice, D.O. 902 provided no person who could refute or validate the advice, as the policy forbid the Paralegal from tendering any legal advice. Accordingly, he followed the advice and attempted to blindly exercise his Arizona bedrock Constitutional right to appellate review by filing the notice of appeal. All to no avail.

For Ariz. properly informed the courts that Aleksys was a plea case which could not use the Rule 31 direct appeal process and had to use the Rule 32, Ariz.R.Cr.P. process which time limit had expired. On 8-29-13, the state court agreed and dismissed the notice of appeal. About 45 days later on 10-14-13, Aleksys 2244(d)(1), S.O.L. expired and he lost his initial federal right to file for habeas corpus relief on his contemplated claims.

Between 2012-2021, Ariz. provided no method for Aleksys to be noticed that he could challenge D.O. 902 by way of habeas corpus. No method to be noticed of the Supreme Court legal basis for his contemplated substance use misreporting error history, or the legal basis for his contemplated sentencing terms error claim. Nor did Ariz. provide any method to notice Aleksys as to what facts would be material to these claims unknown legal basis. These claims and the errors could have supported IAC and Suspension Clause grounds for relief --- had Aleksys known they existed.

C. Federal Court History Ignores All Material Facts

1. Discovery of Previously Unavailable Claims

During the very first days of January, 2019, Aleksys had a chance encounter with recognized Medicolegal Investigator and Advisor KR Holcomb (KRH), who has an expertise in habeas law and a narrow Medical and Injury Biomechanics expertise, (App. #8, CV).

While KRH was a fellow prisoner, his 12,000 hours of studying law, 8,000 hours of studying Biomechanics, 1,000 hours of studying the NPS medical sciences, his international Medical Journal Medicolegal and Biomechanical, peer-reviewed publications. Along with his Ghost Writing work for Lawyers and Ph.D. Bioengineers. Had caused the Biomechanical, Legal, and Medical Communities Academia, to all take formal written notice of both his integrity and his specialized areas of expertise in those fields (id). Even though all knew he was only a self-taught prisoner. Recently, the prison authorized KRH to take his Medicolegal Consulting business Nationwide.

In response to Aleksys sentencing terms question, KRH explained the Arizona process for imposing consecutive sentencing terms was systemically unconstitutional, and was a process KRH spent years investigating, having reviewed over 100 such trial and plea cases. In answer to the question, KRH explained the court's power to impose the enhanced sentencing terms came from A.R.S. § 13-712, which was formerly known as 13-708, and that contrary to the local legal community belief. State trial courts had no inherent power to impose the enhanced sentencing terms, pursuant to the principles and rationale from this Court's Chambers, supra, holding.

Aleksys thanked KRH for the advice and in his excitement to finally discover the secret statute his sentencing terms were enhanced under, he wrote the D.O. 902 Paralegal and asked for the controlling precedents from this Court so he could raise the claim by complying with his 13-4235 and AEDPA, habeas corpus filing duties.

However, in his excitement he forgot that D.O. 902 forbid the paralegal from providing legal advice or precedent legal citations, so the paralegal denied this court access request on 1-9-19 , (App. #12)

Aleksys was forced to return to KRH and ask if he could assist in properly accessing the Courts even though Aleksys could not afford to pay his expert consultant fees. After his complete case review, KRH agreed to assist Aleksys due to the systemic nature of his grounds 1-2 claims, and due to Aleksys ground 4 substantive and affirmative innocence claim.

KRH advised Aleksys of his right to challenge D.O. 902 by way of habeas corpus, contrary to the Ariz. A.G. incorrect legal position (App. #17). Proving the point by giving him access to and notice of, this Court's Johnson v. Avery, infra, line of authority which authorized habeas challenges in specific liberty interest situations. This gave Aleksys notice of the legal basis for his ground one Suspension Clause claim, which in turn, identified the claim's material facts.

KRH then provided Aleksys with copies of this Court's Weeks, infra, Gault, infra, Oliver, infra, line of authority, the Ninth Cir. Gautt opinion, Chambers, supra,and other cases. This gave Aleksys notice of the legal basis for his ground two claim which alleged constitutionally inadequate notice and a lack of jurisdiction defect in his enhanced sentencing terms. Thereby, providing notice of the ground two claims material facts.

KRH then provided Aleksys with access to this Court's Schlup, infra, gateway innocence, and Herrera, infra, substantive innocence, line of authority. Which noticed him of the Supreme Court legal basis for his Ground four claim, and gave notice as to the legal relevancy of all the material reporting error facts in his State record which Aleksys had identified under oath, (App. #11). Advising Aleksys of A.R.S. § 13-201, 13-502, which prohibited criminal convictions for involuntarily induced acts, or when the defendant was suffering from a involuntarily induced HLB psychosis that was secretly induced with Arizona's consent, by synthetic chemicals. As this equates to temporary insanity.

These ground two and four claims, in turn provided Aleksys with the factual and legal basis for his ground three claim of ineffective assistance which included a misreporting claim against psychiatrist Dr. Weller. This ground alleged Mr. Nielson errored when he advised there were no defenses to the charges or death penalty threat. That all his lawyers errored by failing to provide him with copies of the Dr. Weller report and the Mrs. Walton presentence report which contained the substance use reporting errors, and further errored by failing to correct

those inadvertent reporting errors. KRH gave Aleksys access to this Court's Ake, infra, Strickland, infra, line of authority to support these claims, which identified their material facts.

KRH then provided Aleksys with three key exhibits to prove the merits of his four grounds for relief. Dist. Ct. Doc. #2, Exh. A, was his fact witness statement on the 902 issue and his enhanced sentencing terms investigation. Dist. Ct. Doc. #2, Exh. D, (aka App. #7), was the State's party opponent admission to ground one. Dist. Ct. Doc. #2 and Doc. #19, Exh. F, (aka App. #8), was his expert investigative scientific opinion on why the NPS sciences clearly proved the ground four affirmative and substantive innocence claim.

In the Exh. A under oath witness declaration, (Dist. Ct. Doc. #2, Exh. A). KRH declared he was a law clerk and legal assistant for ADOC during the 1994-1997 Casey, supra, era. That his ADOC law Librarian Supervisor Mr. Gerten advised KRH that D.O. 902 had been implemented for only one purpose and that was to assure prisoners could not properly or effectively access the courts.

ADOC Gerten informed law clerk KRH, that the prison was losing far to many constitutional claims before the federal courts, as prisoners were filing effective and proper pleadings. It was hoped that the 902 policy would make them ineffective before the courts and that this would stem the tide of ADOC loses. Gerten stated that ADOC knew the policy violated the U.S Constitution, but ADOC wanted to see what the most de minimums tools would be, that the Courts would eventually order them to replace after they removed all the court access tools.

KRH also gave Aleksys access to the State's party opponent admission from another case. Therein, Ariz. admitted to the state habeas corpus courts, that due to their 902 policy, plea defendants could not timely discover the legal basis for their contemplated claims, and that when defendants finally did learn of a previously unavailable legal basis for their contemplated claim. That the state habeas court should decide the otherwise untimely claim on the merits, (App. #7), due 902. (Thereby applying the Carrier, infra, unavailable claims principle, Aleksys advocates herein, infra). In this other case, the state habeas court accepted the Arizona admission and decided the merits of a claim which was filed years after the filing time limits had expired.

To support Aleksys 14th Amend. Due Process and innocence claim, KRH provided his expert under oath Medicolegal investigative opinion, (App. #8)(Dist. Ct. Doc. #19). This opinion exposed the fact that the legal incense products Aleksys burned, did not list their secret NPS synthetic chemical ingredient additives anywhere on their labels. As both Manufacturers and Retailers secretly sprayed the product with the synthetic chemical

additives which were not noticed anywhere in the product labels.

They then falsely marketed the incense as all organic, safe, and natural. When the secret NPS chemicals were all known to have highly addictive, dangerous HLB, and lethal affects. Unbeknownst to the children who purchased them with no warnings of these dangers being given. As the products came with no such warnings as to their dangerous synthetic chemical ingredients for the children who were the products primary customer base, (App. #8).

From this opinion Aleksys further learned that while the Ariz. Dept. of Health knew of these lethal dangers to their children, they chose to protect the retailers profits rather then the children, and took no emergency public safety measures, like twenty-five other States had. Allowing their retailers to secretly addict Aleksys and numerous other children to their legal products, (App. #8), to protect their Retailers huge cash flow profits.

While Aleksys new under oath patient history, corrected the old fabricated and unsworn history, by proving he began burning the incense in small, enclosed spaces, since this was how the product was intended to be used. That after months of inhaling the fumes indirectly, he became involuntarily addicted to the secret chemical ingredients, and began inhaling the products fumes directly to satisfy his addictive urges. Months later, this led to a very heavy addiction, very heavy usage of the incense, (App. #11). Ultimately causing his HLB psychosis between 4-20-11 and 4-30-11, when the murders were committed by his absconded codefendant, (App. #8).

After his arrest and forced remission, these secret chemicals left his body via natural means. Once the HLB chemicals had left his system, Aleksys HLB psychosis abated and he returned to his normal teenage law abiding self.

KRH further noticed Aleksys that pursuant to 28 USC 2242, this Court's Whitmore, infra, Avery, infra, holdings, and the circuit court opinions in Preiser infra, and Savage, infra. Aleksys had the right to file grounds 1-2, on his own behalf and as an analogous class action habeas on behalf of the other 10,000+ indigent and poorly educated class prisoners.

Aleksys found he had two mutually exclusive statutory duties under the AEDPA. In Ariz., like most states, it takes 2-4 years to properly exhaust a newly discovered federal claim for relief. His statutory duty under 28 USC 2254, was to properly exhaust the claims before filing a 2254 petition. While his statutory duty under 28 USC 2244(d)(1)(B)(D), was to file his 2254 petition within one year of overcoming the State's unconstitutional

impediment or within one year of discovering the previously unavailable legal basis for his new claims.

KRH advised that it was the obvious Congressional intent to have 28 USC 2244(d)(2) construed in a manner which would cover this common situation. This way prisoners could properly exhaust as the AEDPA intended, before filing new claims under 28 USC 2244(d)(1)(B)(D) for relief. As Congress would not have imposed such conflicting statutory duties upon laymen when they drafted the AEDPA.

However, since this Court had not yet harmonized this AEDPA statutory conflict, KRH provided Aleksys with access to this Court's and the Ninth Circuit's precedential laws that were unavailable to Aleksys and authorized the stay and abeyance bandaid fix to the statutory conflict. Rhines v. Weber, 544 U.S. 269 (2005), Mena v. Long, 813 F.3d 907 (CA9 2016). Advising that he employ this well settled procedure to avoid the pains of setting a precedent.

2. Federal Habeas, Mandamus, And COA History

Able to properly access the Habeas Corpus courts for the very first time with this qualified assistance, on 7-10-19, Aleksys filed four 28 USC 2254 timely federal grounds for relief pursuant to 28 USC 2244(d)(1)(B)(D), and the courts statutory equitable discretion to toll time and deem the filing timely, (App. #13).

GROUND ONE asserted that DO. 902 had Suspended Aleksys and his 10,000+ Class of indigents Constitutional rights, to properly access the Courts and appeal their cases or file for Habeas Corpus relief. Asserting that the proximate cause of this Suspension act was this Court's Casey, supra, decision which was decided without knowledge of the material facts necessary to decide that case and to suggest court access remedies to the State, 28 USC 2244(c). In violation of Art. I, Sec. 9, Cl. 2, 14th Amend., U.S. Constitution., Bounds v. Smith, 430 U.S. 817, 821-828 (1977)(court access), Johnson v. Avery, 373 U.S. 483, 485 (1969)(2254 challenge to court access), Wright v. West, 505 U.S. 277, 285-290 (1992)(Historic habeas right rvw'), Anders v. Calif. 386 U.S. 738 (1967)(fundamental error rvw' right).

GROUND TWO asserted a class action violation of Aleksys and 10,000+ other indigents, 6th/14th Amend. right to be timely and adequately noticed of the Accusations full potential punishment and the Due Process right to only be punished by courts which have the proper jurisdiction to do so, and to not have a void sentence imposed. In violation of Graham v. Weeks, 138 U.S. 461 (1891)(void sentences), Gautt v. Lewis, 489 F.3d 993 (CA9 2007)(internal Supreme Court case collection), In Re Oliver, 333 U.S. 257 (1948), Apprendi v. N.J., 120 S.Ct.

2348, at Fn. 10 (2000)(dual accusation ingredients), Ex Parte Bain, 121 U.S. 1,3 (1887)(accusation jurisdictional), Harris v. U.S., 149 F.3d 1304 (CA11 1998), State v. Vargas-Burgos, 162 Ariz. 325 (App. 1998), e.g. People v. Warren, 2020 Mich. LEXIS 688 (2020)("In the fullest light of reality, defendants maximum possible prison sentence will be determined by ... their susceptibility to consecutive sentencing ... which constitutes an enhanced punishment. ... When a trial court advises a defendant ... it must encompass the maximum possible prison sentence ... specifically as to which the trial court possesses an authority to impose consecutive sentences").

GROUND THREE asserted a violation of the 6th Amend. right to effective assistance from the Mr. Neilson and Mr. Cates lawyers and from the prejudgment psychiatrist Dr. Weller. In violation of Ake v. Oklahoma, 470 U.S. 68 (1985), Strickland v. Washington, 466 U.S. 668 (1984), Hill v. Lockhart, 474 U.S. 52 (1985), Lafler v. Cooper, 132 S.Ct. 1376 (2013).

GROUND FOUR began as an asserted Fundamental Fairness violation of the mandatory Due Process right to not be convicted for an involuntarily induced criminal psychosis, A.R.S. 13-201, which was induced by the unknowing inhalation of secret chemical fumes and equated to criminal insanity, A.R.S. 13-502, Harris v. Vasquez, 913 F.2d 606, 625 (CA9 1990 (Supreme Court case collection on state created due process rights), Crane v. Kentucky, 106 S.Ct. 2142, 2146 (1986), Brecht v. Abrahamson, 507 U.S. 619, 637 (1993).

It then developed, (App. #13, 2254 form, p. 9, advising court claim is being better developed), into an additional and credible claim of both actual, Schlup v. Delo, 513 U.S. 298 (1995), Perkins, infra, and substantive innocence, Herrera v. Collins, 113 S.Ct. 853 (1992), Carringer v. Stewart, 132 F.3d 463, 476 (CA9 1997)(defendant must "Affirmatively prove that he is probably innocent"). Due to the very credible expert opinion of Aleksys Medicolegal Investigator KRH, who found trustworthy science that supported a valid Substantive Innocence claim for relief, (App. #8).

Both ground one and two were filed on Aleksys behalf and as a "Next friend" on behalf of the10,000+ other indigent, illiterate, and poorly educated prisoners whose rights were likewise violated, (App. #13, memorandum, p. 1-3). This was done under the authority of Rule 2, Rules Governing 2254 cases, 28 USC 2242, Johnson v Avery, 252 F. Supp. 783, at 785 (1966), 393 U.S. 483, 484-485 (1968)(class filing), U.S. v. Preiser, 506 F.2d 1113, 1125 (CA2 1974), Cert. dnd., 95 S.Ct. 1587 (1975)(class filing), Jules v. Savage, 512 F.2d 881 (5th Cir. 1975)(class filing), and Whitmore v. Arkansas, 495 U.S. 149 (1990)(next friend filing proper when prisoner denied

effective court access).

Aleksys filed these grounds with the Ariz. District court on 7-10-12, along with the aforementioned motion for a stay and abeyance under the authority of Rhines, supra, (Dist. Ct. Doc. #3). Thereafter, on 9-26-19, the Court conducted its mandatory screening analysis and found all four grounds credible. Therefore, it ordered Ariz. to answer both the stay motion and the Habeas factual allegations. This was followed by Aleksys supplemental pleading which crossed in the mail with the above order. Therein, Aleksys provided the court with his Graham, supra, authority, and moved the court to appoint class action counsel and award expert witness fees, (App. #14).

Thereafter, the court sua sponte Suspended the Rule 2, supra, 2242, supra, Avery, supra, Whitmore, supra, Preiser, supra, Savage, supra, right of Ariz. indigents to have a next friend file an analogous class action petition on their behalf. In doing so, the Court errored by holding no Rule, Statute, or Opinion from this Court authorized such a procedure, although most of the above authorities were cited in the first three pages of the habeas memorandum, (App. #13, Memo., p. 1-3).

It then held on one hand, that even if such authorities did exist, Aleksys could not exercise the Constitutional right as it would conflict with Ninth Cir. civil law which forbids laymen prisoners from litigating 28 USC 1983 class actions without counsel. While holding on the other hand, that it would not appoint counsel to protect the rights of the class members, (App. #1, App. #14, p. 3).

Aleksys contested this Suspension order by way of a petition for a writ of Mandamus to the Ninth Cir., which declined to restore the next friend filing rights. Aleksys then moved the En Banc Court to rehear, but they declined to restore the Writ of Habeas Corpus for the impeded indigent class of Ariz. prisoners, (App. #2).

Aleksys had presented a plethora of valid and credible reasons as to why his filing was timely. His Avery, supra, D.O. 902 claim was supported by the State's admission, (App. #7), by his credible fact witness on the true hindrance purpose of the policy, (Dist. Ct. Doc. #2, Exh. A), and by the 902 Paralegal refusal to help access the courts, (App. #12). Alleging that the policy forbid him from complying with his state and federal Habeas Corpus court access filing duties under A.R.S. 13-4235 and 28 USC 2254. Causing him to initially default his grounds for relief, as the unconstitutional policy had forbid notice of the claims legal basis and material facts. Making all four claims previously unavailable to Aleksys until his chance encounter with KRH had made the contemplated claims legal basis and material facts available to him so he could properly access the courts.

Thus, he argued the claims were obviously timely under 28 USC 2244(d)(1)(B), as Ariz. had basically admitted to the Constitutional violation of Avery, supra, Bounds. Asserting that while Casey, supra, was no longer binding or controlling law for ground one purposes, due the concealed 2244(c) facts. That portions of the opinion still remained persuasive and instructive, such as the actual injury standard which Aleksys defaults complied with and that was consistent with the Strickland, supra, prejudice prong standard.

Since the claims legal basis were previously unavailable to him in the prison library, as Ariz. admitted, (App. #7), he further argued that under the Easterwood, infra,10th Cir. holding and arguable the Souliotes, infra, 9th Cir. law, infra, holding, (App. #10,). Time limits for 28 USC 2244 (d)(1)(D) purposes are not triggered until the date in which the prison makes the Court's published precedential legal basis for the claim available to the prisoner. Since that triggering notice date never took place and since Aleksys could only access this Court's opinions, by and through KRH. It was asserted the filing was obviously timely under 9th and 10th Cir. law.

Moreover, since his ground four, now had trustworthy scientific evidence which proved both actual and substantive innocence, (App. #8). Aleksys asserted that the filing was also timely under the Schlup, supra and Perkins, infra, holdings of this Court which authorize equitable tolling due innocence.

Aside from this innocence point, Aleksys further argued that it was also clear, that he would qualify for equitable tolling under this Court's settled Holland, infra, standard, since the delay in filing was directly due to an outside objective factor. Which was the unavailability of his claims legal basis and material facts due Casey and 902.

When assessing the timeliness of the filing under 2244(d)(1)(B)(D), Holland, infra, Perkins infra, and construing those laws. Aleksys moved the lower courts to apply the reasoned unavailability principle from this Courts Carrier, infra, holding. In Carrier, infra, and Reed, infra, this Court had held that when a claim was previously unavailable to counsel who defaulted the claim in state court. That claim could still be raised in federal court, as the unavailability fact meant counsel had done nothing wrong which would disentitle his client to the Great Writ.

While those holdings dealt with unavailability due to the claims novelty, Aleksys asserted the novelty facts were basically dicta --- for it is the claims unavailability which controls that principle. Aleksys asserted it would be more than "passing strange", Perkins, infra, to hold a claims previous unavailability would excuse a Lawyers

untimely state default, but not a indigent prisoner layman's untimely federal filing. As comity interests and principles would not favor such a dual standard.

Finally, Aleksys moved the lower courts to grant ground one preliminary relief in the form of an order which declared all four grounds would be heard on their merits, despite the potentially untimely nature of the filing. Aleksys asserted that his denied court access claim should function just like a Schlup, supra, gateway claim. Reasoning that since the claim's actual injuries were the defaulted grounds 2-4. An obvious equitable remedy, 28 USC 2243, for those Casey constitutional injuries, would be to hear them on the merits, (App. #14, p. 3, order #4).

In their Answers, Ariz. argued the filing was untimely under 2244(d)(1)(B)(D). To present this defense Ariz. had to address the merits of the grounds. In doing so, Ariz. conceded that due to D.O. 902, the Supreme Court legal basis and material facts for all four grounds, were previously unavailable to Aleksys between 2012-2019, until his chance encounter with KRH. Conceded that their 2011-2012, state records reported substance use facts for Aleksys, were all inadvertent false fabrications, and that his true factual history was contained in his 2019 declaration, (App. #11). Conceded that those new facts proved innocence, (App. #8), and conceded no authority existed in the record for the consecutive sentencing terms which were inadequately noticed.

When adjudicating this case, since Ariz. had conceded that the Supreme Court legal basis and material facts for all four grounds, were previously unavailable to Aleksys until his 2019 chance encounter with KRH, the lower courts accepted those factual allegations as being true, (App. #3, p. 8, lines #24-26).

However, they made-up up a new legal standard for 2244(d)(1)(B)(D), which required Aleksys to prove his diligent efforts to overcome Arizona's unconstitutional obstacle to filing, (id). That made-up standard does not exist in any rule, statute, or precedent, and was made-up just for this case.

For Schlup, infra, purposes, the lower courts made-up the same diligence standard which this Court had specifically rejected in Perkins, infra. Then accepted both the qualifications and expert opinion of KRH. However, the Court errored when it used the State record unsworn substance use fabricated facts, which both Parties had agreed were false facts. To impeach the credibility and reliability of the KRH opinion. Rather then assessing the new 2019 sworn facts that both Parties had agreed were true facts which corrected the false State record facts. Using those false facts to impeach the KRH scientific opinion of substantive innocence, and to reject Aleksys request for equitable tolling under Perkins, infra. Rather then applying Perkins, infra, to the true material

facts both Parties had agreed upon.

Accordingly, on 5-18-20, the Dist. court disregarded Aleksys objections, (App. #6), adopted the Magistrate's suggestions, (App. #3), held that the 2254 filing was untimely, and denied the COA request, (App. #4). Thereafter, on 6-29-20, Aleksys filed his State Habeas Corpus petition, and those proceedings are currently ongoing before that trial court.

Subsequently, on 3-21-21, the Ninth Cir. panel and En Banc Court entered their final order, that denied Aleksys timely request for a COA, (App. #10), and to restore the Suspended right to file for the Great Writ of Habeas Corpus, (App. #5).

This Petition for Certiorari timely follows and moves the Court to vacate or amend its fraudulent Casey, infra, opinion, to deem the filing timely, to authorize both grounds one and two to proceed as a habeas corpus class action, to appoint counsel for the class, to award Expert witness fees for KRH and two MD's, to remand for an evidentiary hearing, and then to stay those proceedings pending State exhaustion, (App. #14, p. 3).

In Section II, Aleksys submits grave and compelling reasons for this Court to grant Cert., so that it may restore the Suspended Writ of Habeas Corpus and remedy the fraud which was perpetrated upon it. Section III-IV, then provides traditional compelling reasons to grant Cert. and for Aleksys requested relief.

II. COMPELLING RULE 10 REASONS TO INTERVENE.

Aleksys submits compelling 28 U.S.C. 2244(c) reasons for this Court to remedy the 1996 fraud that was perpetrated upon it, by restoring the Ariz. indigent prisoners Suspended right to apply for the Writ of Habeas Corpus. As the Casey Court has unwittingly directed Ariz. to Suspend this right, which the State happily did in accord with their legal strategy. Aleksys 2020 lower courts then followed the Casey Suspension Clause attack, sub silento, by also Suspending the Habeas Corpus 28 USC 2242, next friend filing rights. Assuring that indigents would have no method to apply for the Great Writ.

This Court has the inherent Constitutional power to remedy frauds which are perpetrated upon it at any time evidence of said fraud comes to light, Chambers, supra. This Court, also has the inherent supervisory power to control the conduct of the Lawyers who practice before it and to assure they comply with the ethical candor rules which bind them, Rule 42, ER 3.3(a)(1)(2), Ariz. Supreme Court Rules, (duties to correct false facts and provide authority "directly adverse to the position of the client and not disclosed by opposing counsel").

Both of these inherent powers are at issue here, as the Court can be a fraud victim when material or controlling facts, 28 USC 2244(c), are concealed or not disclosed to the Court by the Lawyers before it. See Prosser and Keeton on Torts, Lawyers (5th Ed.), p. 737-738, Keeton, Fraud --- Concealment and non-disclosure (1936), Wilson, Concealment or Silence as a form of fraud (1895), 5 Counsellor 230.

This would occur if a Lawyer before this Court concealed known material facts and/or legal authorities from the Court to alter the Court's future judgment and is what obviously happened to this sage Casey, supra, Court. As Ariz. certainly knew of its own intervening Rule 32.5, supra, A.R.S. §13-4235 (eff. 1994) laws and the intervening AEDPA Supreme Court exhaustion and new claims filing requirements. As well as the new S.O.L. changes for the state and federal habeas corpus courts.

It should be emphasized, that Aleksys maintains the highest level of respect for this sage Court's integrity, both today and in 1996. This Court has been the Writ's greatest bodyguard for hundreds of years. However, by perpetrating a fraud upon the Court, Ariz. was able to make the Court its unwitting pawn and the greatest threat to Art. I, Sec. 9, Cl. 2, which the U.S. CONST., has ever faced since this great Republic was formed. Causing this sage Court to unwittingly Suspend the Great Writ, by successfully turning the Writ's greatest bodyguard into its greatest assassin.

At all times herein, Aleksys asserts that this Court's attack on the U.S. CONST., was not done knowingly. As the Court was the unwitting victim of fraudulent misrepresentations by Arizona.

A. Casey Directs AZ To Suspend Writ Of Habeas Corpus

In 1990, the Casey, supra, class action was filed and after the 1992 evidentiary hearing record was created, the case worked its way up to this Court which heard oral argument on the court access topic, on 11-29-95. Thereafter, on 6-24-96, this Court decided the case in favor of Arizona by dissolving the statewide injunction it deemed overbroad, due the lack of documented actual injuries.

In dissolving the injunction the Court suggested that Ariz. could replace the injunction with a court forms only system, which would permit prisoners to file facts only court form petitions. This Casey Court then qualified Bounds, supra, by holding that "The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally", Casey, at 355.

Aleksys identified his ground one class as those indigents who do not have access to the federal precedent that

supports their new contemplated claim. As the new claims' authority did not exist in their state record, e.g. Martinez v. Ryan, 132 S.Ct. 1309, 1317 (2012). Which caused them to thereby default said new federal claim, (App. #14).

Suggesting a system which denies all notice of or access to, this Court's Opinions, is to suggest a system which forbids the Aleksys class of indigents from raising any new 28 U.S.C. 2244(b)(2)(d)(1)(B-D), federal claims for relief. As they have no notice of this Court's Opinion which would create the new claim or notice of which factual predicates are material to their claim and have legal relevancy. Such a system, would forbid the indigent from complying with their A.R.S. 13-4235 filing duty to submit points and authorities which provide the legal citations, or be defaulted. It forbids compliance with their 2254 duty to give the state courts a fair opportunity to apply this Court's precedent to the material facts before it during the exhaustion process.

It further forbids compliance with the S.O.L. Congressional intent of both A.R.S. 13-4232 and 2244(d)(1), to timely bring all the federal challenges before the state and federal courts to promote their interests in finality.

Accordingly, suggesting such a system in light of the 1994 Ariz. changes to their habeas corpus filing laws and the AEDPA. Is to suggest a system which forbids the filing of any new federal claim for relief and contradicts the Congressional intent of the AEDPA. Be that a claim that relies upon a retroactive decision from this Court, newly discovered material facts, new Schlup, supra, evidence, or Brady claims. Such a system forbids all types and forms of newly discovered claims, e.g. Martinez, id. (IAC category of claim).

This sage Court would never knowingly suggest such a system that forbids the filing of any new federal claims for relief --- unless it did so unknowingly. When the 1994/1996 new legal filing requirements, were all fraudulently concealed from the Court to alter its judgment.

As Aleksys informed all the lower courts, this honorable Court has repeatedly emphasized that the highest duty of all Courts is to assure that the right to apply for the Writ is not impeded, accord:

"This Court has constantly emphasized the fundamental importance of the writ of habeas corpus in our constitutional scheme, and the Congress has demonstrated its solicitude for the vigor of the Great Writ. The Court has steadfastly insisted that 'there is no higher duty than to maintain it unimpaired, Bowen v. Johnston, 306 U.S. 19, 26 ... (1939).", Avery, 393 U.S., at 485.

It is no practical defense to assert that this Court's dicta merely suggested the court forms only system in passing

and qualified that dicta by including basic legal advice in the suggested system. While intellectually this may all be true, it is disingenuous in the real world. Lower Courts frequently treat all this Court's words as nearly divine. Dicta from this Court which suggests a bare bones court forms only system, will be viewed by the Nation as preliminary permission to implement such a system. Suggesting, but not defining the basic legal advice ingredient of the system. Will be construed as Ariz. did, as a system that provides basic legal advice on how to fill out a court form. Even though this was likely not what the Court meant.

Moreover, when the lower courts and lawyers review Casey, they would be aware that this Court's legal research skills and resources are --- legendary. One and all would presume the Court knew of the new 1994/1996 filing requirements. If this Court is suggesting a system that would effectively Suspend the indigents right to apply for the Writ with new federal claims for relief. Then this could only mean that the Court was ignoring its duty to safeguard the Writ and intending to weaken or do away with the Writ for indigents.

While this would never be the true intent of this esteemed Court --- this is nevertheless the appearance which Casey unwittingly created due to the 2244(c) fraud which was perpetrated upon the Court by Arizona.

In Casey this Court held that "When ... shows ... claim ... he desired to bring has been lost or rejected, or, ... is currently being prevented, because the capability of filing ... has not been provided, he demonstrates that the state has failed to furnish 'adequate law libraries or adequate assistance from persons trained in law', Bounds, 430 U.S., at 828", Casey, at 356.

Here, Casey also suggested a system which would ironically create these precise types of Constitutional violations. By heeding those directions, the Ariz. prison made Aleksys four grounds Supreme Court legal basis and material facts previously unavailable to him. Until his chance encounter with KRH in 2019, provided Aleksys with effective access to the Habeas Corpus courts and allowed him to overcome this Court's directions to violate the Suspension Clause.

For all these 2244(c) reasons, Aleksys asserts that this Court's Casey dicta suggestion to implement a court forms only system is a suggestion to violate the Art. I, Sec. 9, Cl. 2, 14th Amend., U.S. Const., Suspension, Due Process, and Equal Protection Clauses. Compelling reasons for this Court to grant Cert., exercise its inherent powers, remedy that misdirection, and restore the Great Writ for Ariz. indigents.

B. Ariz. D.O. 902 Forbids Habeas Filings By Indigents

A few years before D.O. 902 was implemented, Rule 32.4, Rule 32.5, Ariz.R.Cr.P., and A.R.S. § 13-4234, 13-4235, (all eff. 1994) were amended, to impose both a 90 day statute of limitations, and a requirement that state petitions contain legal citations and points and authorities, which identify both the legal basis for the claim and the facts that were material or had legal relevancy. Failing to comply with these changes, would mandate the courts to forbid and dismiss the state habeas filings.

Previously, indigents could file facts only petitions which placed a huge strain on judicial resources. As courts had to struggle with the filings in their efforts to determine if the facts which were cited by indigents, who were mostly illiterate or poorly educated. Had actually stated a legal claim for which relief could be granted. These new requirements placed no undue strain on the indigents, as all the prisons gave the indigents direct access to this Court's decisions, and persons trained in law who could tender legal advice, Casey, (1992-1994), supra.

On 4-24-96, the AEDPA likewise followed suit with its new S.O.L. and requirements to exhaust the Supreme Court legal basis for a new claim along with the claim's material factual predicates throughout the state courts. To provide the state courts with a fair opportunity to decide the claim, it was no longer adequate to merely identify the violated section of the Constitution. Indigents had to now cite the Opinion from this Court which their conviction or sentence violated, and that identified those facts which were material or had legal relevancy. As failing to do this, would not provide the state court with a fair opportunity to assess the claim. Again, this placed no undue burden upon the indigents, as every state prison in the Nation was Bounds, supra, compliant.

Thereafter, in 1997, D.O. 902 was implemented with the ADOC obvious foreknowledge, that the policy would forbid indigent prisoners from complying with their, then new, State and Federal Habeas Corpus petition filing duties. Which was the true and obvious declared ADOC intent and purpose of the policy per Aleksys fact witness, infra, and per common sense.

Shortly before and shortly after the 1997, D.O. 902 was implemented, ADOC informed its official Law Clerk and Legal Assistant KRH as to the true purpose and intent of the new court access policy. As one of his ADOC duties, KRH was required to provide ADOC Staff and inmates with official legal advice upon request. Thus, understanding the new policy's purpose and intent was a necessary portion of his job.

KRH was informed in 1997, by ADOC Librarian Gerten, that the ADOC was losing far too many constitutional

challenges by inmates, before the federal courts. That ADOC knew they could not completely stop their inmates from gaining access to the courts. However, D.O. 902 was designed as a legal defense to future challenges. It was the purpose of 902 to remove all the necessary court access tools. Without these tools their inmates filings would become ineffective and void of all precedential authorities which identified their rights and procedures. Thus, while they could still access the Courts in the physical sense, their filings would become incompetent, ineffective, and cause them to lose their constitutional challenges, e.g. Gilmore v. People of Calif., 220 F.3d 987, 993-995 (CA9 2000)(14th Amend. Equal Protection right to precedential laws).

KRH was further informed that while ADOC knew that D.O. 902 was unconstitutional, their legal defense strategy was to remove all the necessary court access tools and then replace only those de minimus tools which this Court ultimately ordered them to replace at some future date. (Dist. Ct. Doc. #2, Exh. A).

Consistent with this denied habeas court purpose, D.O. 902 forbid all general or specific legal research and replaced all the state and federal Reporter case law books with court forms. Assuring indigents would have no direct access to this Court's or the lower Courts precedential laws. It further forbid its 902 Paralegal from assisting with any legal research or providing indigents with any form of legal advice. In this manner, the policy assured indigent prisoners would not be noticed as to this Court's precedential laws and those facts which would be material or have any legal relevancy to said claims Supreme Court legal basis.

Assuring that indigents could not comply with the finality purpose and intent of A.R.S. 13-4134 and 28 USC 2244(d)(1), to timely submit their Supreme Court legal basis and material factual predicates for their claims, to the State and Federal Habeas Corpus courts in a timely manner. As Ariz. finally conceded, in essence, to the state habeas courts, (App. #7).

D.O. 902, assured Aleksys had no notice of this Court's Opinions which provided him with the right to attack the policy by way of habeas, (ground one). No notice of the Constitutional principles or holdings from this Court which show his sentencing terms are an ingredient of the State's 6th Amend Accusation, (ground two). No notice of this Court's Opinion which found psychiatrists can be a necessary defense tool and ineffective assistance claim, (ground three), and no notice of this Court's Opinions which hold trial proceedings must be fundamentally fair, comport with mandatory Due Process rights, and that it would likely violate the Constitution to convict a person who can prove Substantive or affirmative innocence with trustworthy scientific evidence, (ground four).

While further assuring he would have no notice of this Court's Opinions which construed the statutory language and meanings of the AEDPA, or his Schlup, supra, procedural rights. Rights and duties which are in a constant state of flux with routine conflicts between the lower Appellate courts, (unbeknownst to Aleksys), which this Court routinely resolves nearly every Term. Routine lower court conflicts that this Court can take judicially notice of, Rule 201, F.R.Evd., and that Ariz. indigents have no notice of.

While on one hand, D.O. 902 provided no notice of the above implied holdings which identified Aleksys rights and claims. On the other hand, the policy assured Aleksys would have no State provided method of obtaining any legal advice which would notice him of the foregoing rights, claims, or material factual predicates. In this manner the policy assured Aleksys would be forbidden from complying with his AEDPA filing duties.

By forbidding Aleksys from filing his habeas petitions, Ariz. has created a policy which this Court cited as a textbook example of a policy that is obviously unconstitutional, accord:

"There can be no doubt that Tennessee could not constitutionally adopt and enforce a rule forbidding illiterate or poorly educated prisoners to file habeas corpus petitions. Here Tennessee has adopted a rule which, in the absence of any other source of assistance for such prisoners, effectively does just that.", Avery, 393 U.S., at 487.

If one were to substitute the word Arizona for the word Tennessee, in the above quote, it would still ring true in this case. For Arizona has knowingly forbid all indigents from submitting new federal claims for relief to their courts and the Federal Courts.

Arizona conceded to all of these D.O. 902 factual allegations throughout the lower courts, and all of those courts accepted the fact that 902 made the legal basis and material factual predicates for Aleksys four claims, previously unavailable to Aleksys until his 2019 encounter with Medicolegal Advisor KRH, (App. #3, p. 8).

D.O. 902 was birthed at the direction of this Court's unconstitutional dicta in Casey, supra, which suggested Ariz. implement a policy such as 902 that would forbid habeas filings by indigents. Even though the Court may have been unaware of the material facts which made its dicta directions unconstitutional, and even though the Ariz. Casey Lawyers must share the bulk of that blame. This does not change the fact that this Court's Casey suggestion was and remains blatantly unconstitutional. As it suggests a policy that forbids the filing of new federal claims for relief, by way of habeas corpus under the laws that existed in 1996 when the case was decided, and under today's laws. A policy that replicates the precise type of policy this Court cited in Avery, id., as an

example of a policy that would be facially and clearly unconstitutional.

Wherefore, all of these reasons, Aleksys asserts that 902 was created in accord with this Court's suggestion. That Ariz. and the lower courts have accepted the fact that this policy forbid Aleksys from timely presenting his new Federal claims for relief to the courts. That this policy violates, Avery, Bounds, and the valid portions of Casey, supra, and should be declared unconstitutional.

Accordingly, Aleksys moves the Court to accept Certiorari and decide whether or not 902 was or was not an unconstitutional obstacle to his timely filing. As the lower courts left this controlling question unanswered.

C. Lower Courts Suspend 2242 Next Friend Filing Right:

When Aleksys filed his grounds 1-2 on his own behalf, he also filed these two grounds as a Next Friend on behalf of over 10,000+ other indigents, most of which were either illiterate or poorly educated.

Knowing this procedural right was rarely exercised, Aleksys cited his Rule 2, 2254 Rules, authority for the procedure on the first page of his supporting memorandum, (App. #13, Memo.). Citing his Avery, supra, authority on p. 2 (id), and his 28 USC 2242 Preiser, supra, and Savage, supra, lines of authority, on p. 3 (id). Then, later learning of this Court's Whitmore, supra, authority from KRH, since D.O. 902 forbid notice of or access to the precedent by Aleksys.

In Avery, supra, at the District court level the question of legal standing arose, as the prisoner writ-writer who filed that petition was challenging a prison policy which did not hinder his court access. That policy did hinder a very large and "indeterminate" class of illiterate and poorly educated fellow prisoners from accessing the courts, but did not prevent the writ-writer from accessing the courts. So Tennessee argued he could not challenge the policy on behalf of the class as he had no standing to do so. However, the district court held that 28 USC 2242 gave the writ-writer legal standing to both prepare and prosecute the petition on behalf of the very large class, [even though he was pro per]. When the case finally reached this Court it affirmed the District Court's use of 2242 for this purpose, Avery, 252 F. Supp., at 784-785, Avery, 393 U.S., at 484-485, n. 1.

Accordingly, when Aleksys filed his ground one denied court access claim on behalf of the large denied court access class, Rule 2, 2242, Avery and Whitmore, all authorized him to do so as their denied court access Next Friend.

In the Second Circuit Preiser, supra, holding that court held that 2242 authorize an analogous habeas class

action filing to challenge systemic unconstitutional sentences. Which resulted in that court issuing numerous individual habeas corpus writs to remedy the class members unconstitutional sentences.

Preiser, supra, issued an in-depth opinion as to why such a class action procedure was proper for a variety of judicial economy and other reasons. Noting that historically the 2242 statute had always read in the plurality and was only changed to the singular for stylistic reasons. Finding that 28 USC 2242 authorized one prisoner to file on behalf of a large class, and that this procedure was not controlled by the Rule 23, FRCP, line of authority which was informative, but not binding. Preiser, 506 F.2d, at 1123-1131, n. 8.

Other circuits arrived at similar conclusions and in the Fifth Circuit Savage, supra, line of authority, that court held that the habeas class action procedure is properly exercised by a prisoner when the alleged sentencing errors all raise the very same legal question for every class member. Such as this case does regarding timely/adequate notice and the courts authority and jurisdiction to impose enhanced sentencing terms. In Savage, all those Courts allowed the pro. per. prisoners to raise and prosecute the sentencing error claim for the entire class with no assistance from a lawyer.

Accordingly, when Aleksys filed his ground two systemic sentencing error claims on behalf of a large class, he was specifically authorized to do so by Rule 2, 2242, Preiser and Savage.

After Avery, supra, Preiser, supra, and the Savage, supra, lines of authority were all decided by the numerous circuit courts, this court codified the 2242 right into it's then new 1976 Rule 2(c), Rules Governing 2254 Cases. Which made the next friend class action procedures standard habeas corpus practice.

Initially the District court allowed Aleksys' class action to proceed and directed Arizona to Answer the allegations, (App. #15). However, after Aleksys advised the court on 9-20-19, that his ground one class would include every prisoner who defaulted his federal claim in state or federal court between 1996-2020, that court issued its order Suspending the 2242 right, (App. #1).

Erroneously reasoning that no rule, statute, or opinion from this Court had recognized such a filing right. That even if such a filing right did exist, it would be prohibited by Ninth Circuit law which forbids Rule 23, FRCP, class action lawsuits from being filed by laymen. As those lawsuits must be prosecuted only by lawyers. Then declining to grant Aleksys preliminary relief request to remedy that friction by appointing counsel for the class, (App. #14).

Aleksys explained to the Ninth Cir. mandamus panel and En Banc court, that the reasoning was plain error, as Rule 2, 2242, Avery, Preiser, and other Cir. court holdings had all individually and collectively authorized Aleksys to exercise this bedrock habeas right by invoking the next friend class action procedure, wherein Rule 23, FRCP, did not apply, Rule 11, 2254 Rules.

Moreover, to the extent the court thought only counsel should prosecute such an action. District courts retain the discretion, as they always do, to appoint counsel for habeas actions, and the court abused that discretion when it denied a preliminary request for class counsel on one hand and then used its other hand to suspend this right -- since Aleksys was proceeding without counsel due his poverty. As it was beyond question that the class ground one claim was credible and had clear merit, in light of Arizona's state and federal courts accepted party-opponent admission, (App. #7), and concessions.

To the extent the court was holding that the conflicting Ninth Circuit judge made Rule 23, FRCP, laws had prohibited such class action filings by laymen, and controlled this habeas filing. Those inconsistent laws cannot be applied to habeas corpus class action filings pursuant to the express text of Rule 11, Rules 2254 Cases.

To the extent the court was holding that those Rule 23 judge made laws had somehow superseded and Suspended this basic Habeas Corpus Next Friend Rule 2(c), Rules 2254 Cases, statutory and Constitutional layman filing right. Even though those Rule 23, FRCP, judge made laws for civil lawsuits have merit by forbidding laymen from prosecuting class action suits and permitting only lawyers to do so. Such judge made Rule 23 laws, which require only lawyers to prosecute such 28 USC 1983 lawsuits. Cannot be applied to a habeas filing if it is inconsistent with habeas practice, Rule 11, Rules 2254 Cases, or denies a basic and specific statutory and constitutional habeas corpus layman filing right, as to do so would suspend the right. In other words, a judge made law cannot be applied to deny a habeas layman filing right which Congress granted in its statute and this Court authorized in its habeas Rules and Opinions, as doing so would violate, Art. I, Sec. 9, Cl. 2, U.S. CONST..

Moreover, as Aleksys suggested to the Ninth Cir. mandamus courts, (App. #9). This counsel question for habeas class actions, should be decided as it always is, on a case by case basis. For example the Savage class action was prosecuted by laymen as those courts decided counsel was not needed to protect the class, since the action only raised a single legal question. Like Savage, Aleksys' ground two class claim did not yet require counsel. As he was being initially assisted by the person who tutored Lawyers on the legal basis for this Novel

claim (KRH) that was extensively investigated, (Dist. Ct., Doc. #2, Exh. A). Thus, Aleksys felt he could adequately protect the rights of his ground two class members, but not the ground one class rights. As those presumed ground one actual injury defaults permeated the entire state between 1996-2020. Actual injury Court records and prisoners he had no access to, which is why he requested the appointment of class counsel to protect those prisoners rights. Presenting textbook examples of how and when the discretion to appoint counsel should, or should not, be exercised by the district courts, (App. #9).

However, despite all these points, the mandamus courts refused to intervene and restore the right, (App. #2). While the District Court and Ninth Cir. courts likewise declined to grant a C.O.A. on this issue, (App. #4-5, #10).

Although those decisions violate Rule 2, Rule 11, Rules 2254 Cases, 28 USC 2242, and contradict this Court's Avery, Whitmore, holdings, while further conflicting with decisions from the Second and Fifth Circuits. Ironically, the decisions **are** consistent with this Court's Casey suggestion that the lower courts allow Arizona to suspend the indigents right to present new claims in a habeas corpus filing. If the lower courts are to follow those suggestions, they must suspend both the personal 2242 filing right and the next friend 2242 filing right, as was done in this class action case.

Accordingly, Aleksys asserts that reasonable judges would debate the lower courts decision to Suspend this Next Friend class action filing right and moves this Court to accept Cert., so this habeas corpus filing right can be fully restored for Aleksys and the other indigents who had the right Suspended, as the Court has no higher duty then to do so.

D. Lower Courts Fail To Apply "Carrier" Principle

In Murray v. Carrier, 477 U.S. 478 (1986) and Reed v. Ross, 468 U.S. 1 (1984), this Court covered in depth, its rationale for excusing a state procedural default, when a claim was so novel as to make its legal basis "previously unavailable" to counsel who could not be faulted for not having timely raised it in state court. Justifying the use of the court's statutory discretion under 28 U.S.C. 2243, 2254, to excuse the default for just cause.

As Aleksys asserted before the lower courts this Carrier and Reed statutory cause principle is controlled not by the novelty dicta fact, but by the unavailability fact. For it is the previous unavailability of the claim which justifies the court in exercising its statutory cause powers. Why a claim was previously unavailable, is far less

important then the fact it was unavailable to a defendant, whatever the reason.

In this case, Ariz. conceded to Aleksys factual allegations and tendered a party opponent admission, which the lower courts accepted as true. That due to D.O. 902, all four grounds for relief remained previously unavailable to Aleksys between 2012-2019, until his chance 2019 encounter with KRH, (App. #7, App. #3 at p. 8).

In his objections, Aleksys argued that the Magistrate errored directly in his Recommendations 28 U.S.C. 2244(d)(1)(B)(D) analysis (infra). He then argued separately that the entire analysis further errored by failing to apply the Carrier/Reed previously unavailable principle to its 2244(d)(1) analysis and Holland, infra, standard, (App. #6). As the timeliness question is answered in Aleksys favor under that Carrier, statutory discretion, "previously unavailable" principle. If this principle is applied to either the statutory 2244(d)(1)(B)(D) standards, or the statutory Holland, infra, equitable tolling standard, as should have been done in this uncontested case.

Accordingly, Aleksys moves the Court to accept Cert. to answer this question of whether or not this Carrier "previously unavailable" principle should be applied to a Court's 2244(d)(B)(D) and Holland, infra, analysis, when doing so will make the denied court access filing timely, and when the State admits their policy made the claims legal basis and material facts previously unavailable to Aleksys.

Made-Up Standards Protect Writs Suspension

Here, Aleksys provides a number of Rule 10, supra, compelling reasons for the Court to accept Certiorari and remedy judge made legal standards that were crafted only for this case, in an apparent effort to protect Arizona's Suspension of the Habeas Corpus Writ. Doing so, by rewriting the Congressional AEDPA statutory standards so this action could be dismissed before D.O. 902 was necessarily declared unconstitutional, as it is.

Resulting in legal standards for this case, which conflict with the legal standards imposed by Congress, by this Court, by the other Circuit courts, and arguably by the Ninth Circuit. Then further modifying and misapplying this Courts statutorily created, equitable discretion tolling standards. All in an apparent effort to protect Arizona's clear Suspension of the Great Writ. As this Court unwittingly suggested they do, back in 1996.

Aleksys lower courts could not avoid their clear duty to declare D.O. 902 unconstitutional, unless they could somehow dismiss the filing as being untimely. Something they could not do under the past and present versions of the AEDPA legal standards which govern the timeliness of habeas corpus filings. Therefore, the court made up their own legal standards and applied them only to this case. Then dismissed the action under those made up

legal standards.

Accordingly, the Court is moved to accept Certiorari and remedy all of these plain and obvious errors, so the right of indigents to apply for the Great Writ of Habeas Corpus can be restored in the State of Arizona whereat to this day, it remains Suspended.

E. Made-Up 2244(d)(1)(B) Standards Protect Suspension:

Aleksys' 2254 ground one identified this class as those indigents who cannot comply with their State and Federal Habeas Corpus filing duties, as the Supreme Court authority for their new federal claim, appears nowhere in their state record and was previously unavailable to them. That is, lacking any and all legal notice of their claims. Causing their default actual injuries. e.g. Martinez v. Ryan, 132 S.Ct. 1309, 1317 (2012)(when new claim not in state record, difficult for defendant to have adequate notice of claim), Gunn v. Newsome, 881 F.2d 949, 956-962 (11th Cir. 1989)(En Banc)(indigent must have notice of both legal precedent and legally relevant facts to be noticed of claim. Adequacy of the legal notice for said claim should be assessed under this Court's liberal pro se standards), Easterwood, infra, Carrier, infra, Reed, infra.

Such as the 10,000+ indigents in Aleksys 2254 ground 1-2 Classes, who had no notice of their grounds Avery, Bowens, Weeks, Gautt, (all supra), legal basis and material facts, causing them to default those previously unavailable Fed. grounds. As no amount of due diligence can uncover a precedent which does not exist in the prison, and remains unavailable to the indigent, due restrictive court access prison conditions. Conditions, which this 1996 Court suggested Ariz. prisons impose.

When denying Aleksys assertions under this subsection that D.O. 902 was unconstitutional and failed to provide notice of his four claims Supreme Court legal basis and material facts. His lower court accepted these allegations which Ariz. did not contest, (App. #3, p. 8), and accepted Ariz.'s Party-opponent admission that 902 obstructed timely habeas filings due its restrictive court access "resources", (aka tools), (App. #7), which were intended to hinder timely filings and cause defaults, (Dist. Ct. Doc. #2, Exh. A).

Yet, found Aleksys had failed to establish his diligent efforts to overcome the Arizona D.O. 902 "obstacle", and refused to apply this subsection for this reason, (App. #3, p. 8). A made up legal standard which does not exist in the Congressional 2244(d)(1)(B) statute or any precedent. As under 2244(d)(1)(B), it is enough to show that the state placed a constitutional violation in the way of a timely filing, by making the claims legal basis

previously unavailable to Aleksys.

Neither this statute nor any opinion from this Court, requires the indigent to show his diligence in attempting to overcome said constitutional violation, as subsection (B), is not subsection (D), infra, and imposes no such diligence statutory burden upon Aleksys which he had to meet. Carrier, 477 U.S., at 513-514, citing, Reed v. Ross, 468 U.S. 1, at 16 (1984)("we hold that where a claim ... legal basis is not reasonably available to counsel, a defendant has cause ..."), Panetti v Quarterman, 551 U.S. 930, 946 (2007)("we resisted an interpretation of the statute that would 'produce troublesome results', 'create procedural anomalies', and 'close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress intent'), Callanan v U.S., 364 U.S. 587, 596 (1961)(when statute susceptible to more than one interpretation, the rule of lenity dictates that any doubt should be resolved in favor of the defendant).

Moreover, this precise 'overcome the obstacle' standard, was specifically assessed and rejected by the Ninth Cir. 2010, Souliotes Panel, infra, and other circuit courts, under their 2244(d)(1)(D), statutory diligence analysis. Finding the statute requires reasonable diligence and does not require a prisoner to show some obstacle stood in his way of filing.

However, Aleksys' lower court incorrectly cites to the 2244(d)(1)(B), Bryant v. Ariz. Attorney Gen., 499 F.3d 1056, 1061 (9th Cir. 2007)(timely noticed IAC Appellate counsel claim), case. To the 2244(d)(1)(D), Mutab v. Schiro, CV-07-1415-PHX-DGC, (8-6-09, Doc. #12, R and R)(timely noticed Blakley v. Washington, 542 U.S. 296, 2004, claim), unpublished case holding, and to it's internal case of Rasberry v. Garcia, 448 F.3d 1150 (9th Cir. 2006)(ignorance of available law no excuse for pro. per. untimely filing), for its legal support.

Alleging these holdings provide the authority which required the court to dismiss for untimeliness. While Aleksys takes no issue with these holdings, they simply have no bearing or legal application to this Carrier, supra, category of 'previously unavailable legal basis' case, and must be disregarded as being non applicable to this factual pattern.

In both Bryant, supra, and the unpublished Mutab, supra, case. Those defendants were both timely noticed of this Court's precedent which established their new claims legal basis and material facts which were therefore, timely available to them. Since they both had timely notice of their claims legal basis and material facts, they both timely exhausted their claims in the state courts. Thereafter, they both became negligent in their federal court

timeliness filing duties for no valid reason. Frivolously claiming D.O. 902, had failed to notice them of their AEDPA S.O.L. filing duties. When contrary to those assertions, the relevant statutes were readily available to them in the prison library and gave notice of their filing duties.

Since both of these prisoners were timely noticed of their new claims Supreme Court legal basis and material facts and their 2244(d)(1) filing duties. They did not and could not allege that they were denied court access, on the grounds that their new claims legal basis and material facts were "previously unavailable", Carrier, supra, to them due to D.O. 902. Bearing no factual pattern resemblance to this case.

For this reason, those defendants, in those two cases, do not belong to the Aleksys ground one class of indigents who were denied timely notice and court access. As they had adequate and timely noticed claims factual patterns, which were the polar opposite of this' previously unavailable legal basis', record, e.g. cf. Oliver, 333 U.S. 499 (1948)(right to adequate and timely notice of charges). Those Bryant, supra, and Mutab, supra, timely noticed claims factual patterns, bear no resemblance to this previously unavailable and no notice factual pattern. Thus, the authorities' holdings, principles, and rationale, have no application to this denied legal notice case.

As to the Raspberry, supra, line of authority, it likewise has no bearing upon this case. It stands for the principle that ignorance of the available law is no excuse for a layman's untimely filing. That is, laymen cannot rely upon their lack of legal training as an excuse for an untimely filing. However, Aleksys accepted facts show a lack of timely and adequate legal notice. A bedrock Constitutional principle this Court is well acquainted with, Oliver, supra, Gautt, supra, Carrier, supra. Unlike Raspberry, Aleksys does not allege that he was denied timely court access due to his lack of legal training, but rather a lack of legal notice.

Alleging this lack of legal notice was due to his poverty and unconstitutional D.O. 902 obstacle, which made legal notice of all 4 grounds legal basis, previously unavailable to him. Allegations which Ariz. conceded, admitted, and that the lower courts accepted as true, due to D.O. 902. In other words, he did nothing wrong which should disentitle him to the protection of the Great Writ, e.g. Fay v Noia, 372 U.S. 391, 438 (1963)("principle that a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks."). As he simply had no timely notice that there was a legal basis for all four of his claims.

Creating a new 2244(d)(1)(B) legal standard which contradicts the Congressional intent of this 'Brady' and 'Avery' statute, is to in essence, rewrite the statute to suit the Suspension Clause needs of Arizona, e.g. State v

Tarango, 185 Ariz. 208, 212 (1996 En Banc)(" We have a duty to avoid rendering statutory language superfluous, void, contradictory, or insignificant."). Therefore, Aleksys moves the Court to accept Certiorari and to remedy these 10,000+ indigent class actual injuries and injustices, so the Great Writ can be restored for all Ariz. indigent prisoners --- as is their Constitutional right.

F. Conflicting 2244(d)(1)(D) Standards Protect Suspension:

Under this section, Aleksys argued that the Supreme Court Legal basis and material facts for all four of his federal claims, were previously unavailable to Aleksys, due to the D.O. 902 defects, which hindered Aleksys from receiving adequate and timely notice that the claims existed. Submitting both the Ariz. party-opponent admission, (App. #7), on this lack of notice and unavailability point. Along with the D.O. 902 paralegals admission that she was prohibited from assisting Aleksys with his contemplated claims and mandatory State and Federal Habeas Corpus filing duties, (App. #12).

Ariz contested none of these material factual allegations, and the lower district court therefore, accepted them as all being true, (App. #3, p. 8). Under Ninth Cir. law those State concessions equate to admissions by the State under Bland v. Calif. Dept. of Corr., 20 F.3d 1469, 1474 (9th Cir. 1994), that the facts were all true. However, in its analysis under this subsection, after accepting these factual justifications for the untimeliness of all four grounds, as being true --- the court then ignored them in its 2244(d)(1)(D) analysis. Focusing instead, only upon the ground four State record facts which both Parties had agreed were false facts, (infra subsection C). Disregarding the accepted and admitted ground one Avery, supra, factual allegations which showed the new claims legal basis were all 'previously unavailable' to Aleksys.

Accordingly, Aleksys argued the filing was obviously timely under subsection (D), as under Ninth and Tenth Cir. law, his AEDPA diligence duties are not triggered until the date on which the prison makes the Supreme Court precedents legal basis available to the prisoner in the library. An event which has never taken place. See Souliotes v. Evans, 622 F.3d 1173 (9th Cir. 2010)(rejecting obstacle legal standard in favor of statutes reasonable diligence standard and adopting Easterwood, infra), Souliotes v. Evans, 654 F.3d 902 (9th Cir. 2011)(En Banc)(vacating on other part two grounds), and Easterwood v. Champion, 213 F.3d 1321,1323 (10th Cir. 2000)(holding AEDPA statutory diligence duty not triggered until clams precedent is made available to prisoner in prison library).

Even though the validity of 2010 Souliotes was in question. Aleksys still argued that part one of the opinion remained good Ninth Cir. law in light of its case history, (App. #6 , p. 14-16). That despite this arguable fact, the Tenth Cir., Easterwood opinion remained good law which the Ninth Cir had adopted in 2010 Souliotes, supra. As was this Court's cause and prejudice, Carrier and Reed, supra, 'previously unavailable legal basis' rationale, which was identical in principle to this action's circumstances.

As this Court held in Holland, infra, due diligence means reasonable and not maximum diligence. Actions a reasonable prisoner would take when faced with a court access system which specifically prohibited all legal research and access to all State provided legal advice. Aleksys did what a reasonable person would do.

He tried to have his family hire a lawyer who could conduct basic legal research and provide legal advice. But due to his poverty and the legal debts his family owed, this was not possible, (App. #16)(aka Dist. Ct. Doc. #2, Exh. E). For as Aleksys confirmed in 2019, his 2012 reading of D.O. 902 was correct and that paralegal was forbidden from providing Aleksys with any of this Court's controlling precedent legal citations, so Aleksys could comply with his mandatory A.R.S. 13-4235 and 28 U.S.C. 2254 filing duties.

As Aleksys informed the lower courts, this equated to solitary confinement, just as the Avery, supra, defendant faced. Rather then a physical solitary confinement, it was a State created isolation from all of this Court's precedential laws. In this restrictive situation, only by unrealistically trying to escape from prison to access this Court's opinions could a prisoner prove diligence, if one required such proof. For there is nothing else an indigent Ariz. prisoner can do to access this Court's opinions which the prison makes unavailable to it's indigents, other then trying to escape so this Court's opinions can be accessed. A draconian remedy Aleksys is not suggesting.

Accordingly, for all these reasons, Aleksys moves the Court to accept Certiorari, and to adopt Easterwood, supra, as the binding 2244(d)(1)(D) law for this case. Since that holding and its rationale is consistent with both this Court's Reed, supra, unavailability principle, and the Oliver, supra, adequate and timely notice principle.

G. Misapplied "Holland" and "Perkins" Tolling Standards:

In Holland v. Florida, 560 U.S. 631 (2010), this Court held that if a defendant could show some objective factor had hindered his timely filing and that he was diligently attempting to exercise that right. Then the Court could exercise its statutory discretion powers and equitably toll the time for filing under 2244(d)(1). While in McQuiggin v. Perkins, 569 U.S. 383, 391-396 (2013), this Court held that if a defendant could prove Schlup,

supra, actual innocence to the Court's satisfaction. That the time limits under 2244(d)(1), would also be tolled. Finding for State/Federal comity reasons, that it would be "passing strange" to hold such a cause/prej. showing would excuse an untimely State procedural default but not an untimely Federal court procedural default.

In denying tolling under Holland, supra, the lower court first accepted Aleksys factual assertions that he was "unaware of the legal basis for his grounds or of the legal relevancy of the facts in his case", due to D.O. 902, which forbid said legal notice, and forbid compliance with the State/Federal Habeas Corpus filing laws (App. #3, p. 8, Ln. #25-26)(App. #6, p. 5-16, #9A, p. 3, #9B, p. 2, #9C, p. 2-3 , #10A p. 2-3, #10B, p. 6-8). Then relied upon false ground 3-4 facts both Parties had agreed were tainted evidence. Misapplying the previously discussed, Raspberry, supra, noticed legal basis line of authority, to this lack of notice and 'previously unavailable legal basis' record.

Concluding that Aleksys did not prove he "has been pursuing his rights or that some extraordinary circumstances made it impossible for him to timely file a petition", (App. #3, p. 12). Even though that is the incorrect standard. As Holland requires only proof of a hindrance and not proof the filing was made 'impossible'. That is, that "some extraordinary circumstances stood in his way", Holland, 560 U.S. at 649. Thereby, by applying the wrong legal standard to evidence that both Parties had agreed was false. Aleksys' court errored by refusing to equitably toll time under Holland.

In denying the Perkins, supra, tolling claim, the lower court relied upon the patient history facts both Parties had agreed were false, rather then the newly discovered patient history facts, both Parties had agreed were true and had corrected that false State record. Denying the claim in part for this mistaken factual reason and in part under the wrong diligence proof legal standard. As this Court has specifically considered and rejected the contention, that an actual innocence defendant, must also establish his diligence in placing the innocence evidence before the Court, Perkins, supra. Here, the lower court rejected this Court's Perkins, id., standard and held Aleksys had to prove diligence as well as innocence, (App. #3, p. 13, Ln. #22-23, "does not establish that he was unable to discover this new evidence prior to 2019"). Doing so even though the court identified the correct legal standard, but, then declined to apply it, (id.).

Therefore, Aleksys moves the Court to grant Certiorari for both of these Holland and Perkins factual assessment and legal standard errors, for the reasons that follow.

1. Holland Standard Is Obviously Met:

Aleksys had asserted that he obviously qualified for equitable tolling under Holland, (id). As Ariz. Had admitted in their party-opponent admission, then conceded in this case, that Aleksys' ground one denied court access and Habeas Corpus Suspension Clause factual allegations were all true. Which his lower court accepted as being true. Evidence supported factual allegations that due to 902, his claims legal basis and material facts were 'previously unavailable' to him, that the policy forbid proper and timely habeas corpus filings, and that he was denied notice of his claims legal basis, (App. #3, p. 8)(App. #6)(App. #7)(App. #10).

Since both Parties agreed and the lower courts accepted these facts as true. It would be obvious to any unbias jurist, that this objective and accepted impediment factor, had qualified Aleksys for equitable tolling under the Holland, standard, as 902 clearly "stood in the way" of timely filings. Factual allegations which were conceded in light of Aleksys clear and convincing district court exhibits evidence.

Such as his Exh. A under oath fact witness declaration that ADOC had admitted that 902 was created specifically to deny proper court access. His 902 Exh. B which showed all legal research and legal advice was forbidden. His Exh. C paralegal's admission that she could not assist Aleksys with his mandatory legal court filing duties. His Exh. D party-opponent admission from Ariz. that 902 hinders timely Habeas filings and that for this reason, the Habeas courts should excuse untimely filings. As well as his family's Exh. E declarations that they could not purchase the necessary legal research and legal advice tools Aleksys requested to access the Habeas Corpus courts due to their financial hardships. (Dist. Ct. Doc. #2, Exh. A-E), (App. #6 , #7, #9-10, #12, #16).

Aleksys asserts that this uncontested and accepted evidence, was an obvious objective factor that clearly meets this Court's Holland, supra, equitable tolling statutory discretion standard. Accordingly, Aleksys moves the Court to accept Certiorari and remedy this plain error, by granting Holland equitable tolling relief.

2. Perkins Standard Is Obviously Met:

For Perkins, supra, tolling purposes, Aleksys had attested under oath, that his 2011-2012, unsworn State record facts regarding his substance use patient history, were false. Having been inadvertently fabricated by his lawyers, psychiatrist, and probation officer. All of whom had falsely reported his legal substances use as unlawful substance use. Due to their lack of training in the common everyday verbiage teenagers used to describe their legal substance use, (aka ground 3-4)(App. #8, Exh. F)(App. #11)(App. #6, p. 17-26)(App. #10A, p. 8-9, App.

#10B, p. 8-13).

Aleksys' expert KRH, found this linguistic substance naming confusion was consistent with Med. studies that reported on it and with the other 5 witnesses he interviewed and had purchased this incense during the Aleksys' 2010-2011 time era, (App. #8, Exh. F, p. 3)(App. #6 , p. 17-26)(App. #10A, p. 4-6, 8, #10B, p. 8-13).

Accordingly, it was the KRH opinion that Aleksys explanation for how his legal substance use patient history, had been inadvertently reported upon by his lawyers, probation officer and defense psychiatrist, as illicit substance use in their unsworn reports and sentencing memorandum. Was consistent with D.O.J. and medical studies which reported upon this linguistic issue and the 5 witness interviews, KRH had conducted. Therefore, he found no reason to doubt Aleksys reporting error confusion explanation, which Ariz. and the lower court accepted as true, (Dist. Ct. Doc. #2, Exh. F).

Under the Ninth Circuit law of Bland, supra, and Rule 5(b), Rules 2254 Cases ("must address the allegations in the petition"). When the states do not contest or otherwise call into question, a prisoners evidence supported factual allegations. This equates to their admissions that the facts are true and cannot be ethically contested. In other words, the case has no factual disputes or controversy for the Courts to resolve under their Art. III, U.S. CONST., powers. (App. #6, p. 6-7)(App. #10A , p. 2-3, #10B, p. 5, 10).

After Ariz. had filed their Answers and conceded under Bland, supra, and Rule 5, id., that the 2011-2012 State records on Aleksys' substance use history, were inadvertently false and fabricated patient history records. KRH amended his earlier Medicolegal investigative opinion with a better streamlined version which asserted that the new evidence met both the Schlup, supra, procedural gateway standard for grounds 3-4, and the Herrera, supra, freestanding substantive innocence standard. Causing Aleksys to supplement his ground four with a newly developed Herrera claim, (Dist. Ct. Doc. #19)(App. #8), as he advised the court he would do when he initially filed ground four, (App. #13, p. 9).

These Rule 5, supra, admissions from Ariz. and the KRH investigative opinion, had caused a PARADIGM shift in how the new evidence should be assessed. As the materiality of the new Aleksys patient history facts, when combined with the new KRH trustworthy scientific evidence. Established a prima fascia case of both Perkins/Herrera, supra, procedural and substantive innocence, while making Ariz. liable for Aleksys involuntary criminal conduct, (App. #8, Exh. F).

This accepted Scientific evidence proved that in 2010-2011, the Ariz. Dept. of Health allowed their retailers to falsely advertise their incense products, as being "all organic", "natural", and "safe" to burn in small, enclosed spaces such as a bedroom, (App. #8, Exh. F). That is, using the incense product as it was intended to be used, by burning it indoors, was supposed to be safe.

When Ariz. knew this was not true, as their Retailers and incense Manufactures, were secretly spraying the incense with new psychoactive substance (NPS) synthetic chemical cannabinoids. Which belong to a family of chemicals that were known in 2010, to have high chemical addiction and homicidal psychosis characteristics which could cause death. Yet, giving no notice or warnings of these secret synthetic chemical additives on their product labels or advertisements, (id).

These chemical etiology traits were so dangerous to the public, that in 2010-2011, more than 25 different state Health Departments took emergency measures to remove the products from the Retailers' shelves or make them unavailable to teenagers. However, a Retailer's $2,500 investment in the NPS Cannabinoids, when secretly sprayed onto the otherwise all organic incense product, would generate a $250,000 profit for the Retailers, (id).

Therefore, while the secretly sprayed on chemicals were extraordinarily dangerous for a child to inhale when the incense was burned, and the chemical fumes released. Retailers had no qualms —turning children into their legal drug addicts and repeat customers, in light of these huge profits which could be made off the addicted children (id).

At this 2010-2011time era, the synthetic cannabinoids dangers were well known to both the medical community and law enforcement. Lab tests had shown that breathing in the chemical fumes repeatedly would cause addiction. While hard science proved that repetitive or heavy doses of the chemical fumes, would cause not only addiction and potential overdoses, but a bizarre homicidal psychosis, KRH has appropriately labeled the Hannibal Lector Behavior (HLB) psychosis. Due the chemicals characteristics of inducing homicidal and bizarre flesh-eating urges upon an otherwise normal person. Who would think such acts to be normal law abiding behavior when suffering from a chemically induced HLB psychosis, (id)(aka insanity).

Put another way, if a child is secretly exposed to repetitive or heavy doses of these NPS synthetic chemical fumes, this will likely induce addiction and a HLB psychosis in the child. In other words, chemically induced temporary insanity, which is recognized as such by the psychiatric community, and that abates once the chemicals

leave the child's system, (id).

Moreover, the incense was marketed primarily to teenage children such as Aleksys, who were the Retailers largest customer base. With the secret chemical additives known addictive qualities, Retailers were assured repeat child addict customers, who would always return to satisfy their addiction urges. Addiction urges that would increase in severity over time, for those children who did not overdose, (id).

To assure the children did not learn of the dangerous and addictive synthetic NPS cannabinoid chemicals that were being sprayed on the incense in secret. Retailers and Manufactures did not list the chemicals on their product labels or otherwise warn or give any type of notice as to these known synthetic NPS chemical dangers. They did however, post pharmacological dosage data for their all-organic products, to reduce the overdose incident rates (id).

While the Ariz. Dept. of Health and their State Legislative Br. of Govt. knew of their Retailers false 'all natural' advertising practices and the public dangers these secret HLB chemicals posed to their children. This Dept. and the Legislators made the informed decision to protect their Retailers profits, rather than the health and safety of their children. Deciding to provide the children with no warnings or notices that the legal incense products they were buying, contained dangerous NPS chemicals.

By giving no notice of the fact that burning the incense in small, enclosed rooms as the product was meant to be used, would cause addition, an HLB psychosis, and possibly death. Ariz. assured its Retailers huge profits would be protected, as said notice would have caused most of the child customers like Aleksys to avoid the incense dangerous chemicals, (id).

Unaware of these hidden dangers, Aleksys sworn, uncontested, and accepted statement, verified that he had been an expert martial artist since his early childhood. That his martial arts discipline is interrelated with the meditation arts. That Aleksys practiced meditation for a few hours every day. That to help facilitate that practice, in 2010, he began purchasing legal incense and burning it as the product was intended to be used, in his small, enclosed bedroom, while meditating. That the odor offended his roommates, so he moved his meditation practice to his car whereat he continued to burn his legal incense while meditating. That this routine went on for a few hours of every day for months, (App. #11)(Dist. Ct. Doc. #2, Exh. H).

That after months of inhaling the incense fumes as the product was intended to be used, Aleksys became

involuntarily addicted to the incense secret chemical fumes. That the legal product was marketed to teenage Aleksys as an organic all natural product. That it came with no labels or warnings, that the product contained synthetic NPS cannabinoid chemicals. That Aleksys had no warnings or notice from any other source, that the falsely marketed product contained dangerous synthetic chemicals which could addict him and then chemically induce a homicidal HLB psychosis. That in 2010 and 2011, Aleksys did not use social media and had no such internet accounts. That the news media did not widely report upon these HLB dangers until 2012, (id).

That by late 2010, Aleksys addictive urges rapidly progressed in frequency and in severity, after months of burning the incense. So much so, that inhaling the burning fumes would no longer satisfy his urges or cure his headaches, so at this time he began directly smoking the incense to satisfy his addictive urges multiple times each day. Moreover, while under the affects and influence of these secret chemical fumes, Aleksys began purchasing and smoking the falsely advertised 'bath salts', product which the Ariz. Dept. of Health knew, could not be used as a bath salt, (id).

This 2010-2011, bath salt product, like the incense, was secretly sprayed with synthetic NPS chemicals by the Manufacturers and Retailers, who gave no notice or warnings of these chemical additives on their product labels. While knowing their product was being sold ONLY so teenagers could burn and inhale it's fumes, since it could not be used as a bath salt. While the secret NPS synthetic chemicals sprayed on this product, did not belong to the Cannabinoid family of chemicals and instead belonged to the synthetic Cathinones family of chemicals. They likewise had the very same addiction and HLB psychosis etiology traits, just as the cannabinoid chemicals did. Etiological affects which were widely known throughout the medical and law enforcement communities, who had to deal with those affects and lethal overdoses on a regular basis, (App. #8, Exh. F).

By the end of 2010 and early 2011, Aleksys became heavily and involuntarily addicted to both products' secret chemical additives. During the relevant crime dates, Aleksys was ONLY under the influence of these involuntarily inhaled synthetic chemical fumes and no other substances. Contrary to his fabricated 2011-2012 State records which had inadvertently errored by reporting otherwise, (id), (App. #11).

Pursuant to this evidence, Aleksys ground three asserted his lawyers and psychiatrist were ineffective for failing to provide him with copies of their reports which had fabricated a false patient history. So those reports and sentencing Memo. could be timely corrected and an innocence involuntary actions defense raised at a trial.

As Aleksys would not have waived his trial right or signed a plea, had he known of this involuntary actions defense, Hill, supra, (App. #6, p. 17-27)(App. #10A, p. 4-6, App. #10B, p. 8-13).

While Aleksys ground four asserted that all of his criminal actions were involuntarily caused by the secret chemical fumes he was unknowingly inhaling. Chemical fumes that involuntarily induced his HLB psychosis which abated hours after his arrest and forced remission. As supported by his Medicolegal investigators expert opinion, which KRH asserted under oath, represented the opinion of the mainstream scientific Majority, (App. #8, Exh. F). An opinion which Ariz. conceded was reliable and true, and that credibly supports both Perkins, supra, tolling relief, and Herrera, supra, substantive innocence relief.

While both Ariz. and Aleksys were in agreement that the State record facts which reported upon Aleksys substance use patient history. Were false record facts, which Aleksys sworn statement, (App. #11), had properly corrected. His lower court errored by relying upon that false evidence to impeach the Medicolegal expert opinion of KRH. Rather then relying upon Aleksys new corrected, Perkins, supra, patient history facts as it should have, (id). Denying Aleksys request to toll time under Perkins, supra, on this false evidence ground.

Here, both Parties agree that the corrected facts in App. #11 are the true substance use facts in this case, and that the 2011-2012 State record facts on this point are false. While both Parties further agree that the generally accepted and "trustworthy", Schlup, supra, scientific evidence in App. #8, Exh. F, proves that Aleksys' criminal actions were involuntarily induced by the legal chemicals he was unknowingly inhaling.

Chemicals which caused a involuntary HLB psychosis, caused a temporary and chemically induced insanity episode. Which abated once he went into a forced remission and the secret chemicals he had been unknowingly inhaling were naturally purged from his system. Returning teenage Aleksys to his normal law-abiding state of mind. As psychiatric testing had shown that Aleksys was a perfectly normal and mentally healthy child, with a loving family and no trauma in his past, (id).

Accordingly, Aleksys moves the Court to accept Cert. of his Perkins and Herrera substantive innocence issues.

Dated this 16th Day of August 2021

By: _____

Aleksys Lomeli-Garcia
Petitioner and Next Friend
In Propria Persona