No. 21-5618 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JESUS MANUEL MORAN — PETITIONER
(Your Name)

vs.

DAVID SHINN
ATTORNEY GENERAL OF AZ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JESUS MANUEL MORAN 107586
(Your Name)
ASPC-FLORENCE
P.O. BOX 5000
(Address)

FLORENCE, ARIZONA 85132
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. When State courts were deprived of their primary responsibility to decide on Petitioner'e federal claims, was it error for the court not to to issue the COA ?

2. When the Inter-American Commisssion on Human Rights has found the Arizona judicial systm does not comport to the American Declaration should the COA have been issued?

LIST OF PARTIES

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

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

RELATED CASES

Jesus Manuel Moran
PLAINTIFF,

Vs.

THOMAS E. HIGGINS
DEFENDANT

- U.S. COURT OF APPEALS
FOR THE NINTH CIR.
NO. 19-17503
- D.C. NO. 4:17-CV-00613-JGZ

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STATEMENT OF THE CASE

1. After a jury trial Petitioner was convicted and sought PCR relief once his direct appeals were exhausted. (App. 4 t0 49)
2. PCR counsel did not seek review of the trial court's decision and lied to Petitioner and his family, stating he sought review. (App. 37-40)
3. Even though the Arizona Court of Appeals directed counsel to ask the trial court or leave to file a delayed petition, counsel failed to do so, thereby denying Arizona courts the opportunity to rule on the federal claims. (App. 64-65)
4. The habeas court denied relief and declined a COA (App. 4 to 22)
5. The Ninth Circuit declined to issue the COA (App 2-3) and denied rehearing.(App.1)
6. Petitioner filed a diversity claim for malpractice against PCR counsel and also claims with the State Bar (App. 68-70)
7. The trial court found that the failure of trial counsel to afford Arizona Courts the opportunity was not the proximate cause of his injury. (App. 53-63) which the Ninth Circuit upheld on appeal. (App.51-52)
8. A timely petition for rehearing was filed and denied. (App. 50)

JURISDICTION

9. The Ninth Circuit decisions are unpublished, issued November 23, 2020 and December 9, 2020 and marked EX 2 and 51.
10. The order denying timely petitions for rehearing are marked EX 1 and 50 and were issued February 10, 2021 and are unpublished.
11. 28 U.S.C. 1254 (1) confers jurisdiction.

REASONS FOR THIS PETITION

This proceeding involves the following questions of exceptional importance:

WHEN THE COURT FINDS STATE COURTS WERE NOT GIVEN THE OPPORTUNITY TO REVIEW FEDERAL CLAIMS AS REQUIRED BY AEDPA, THE FEDERAL HABEAS COURT HAS THE DUTY TO REMAND THE MATTER FOR THAT REVIEW

1. As the primary responsibility for substantive review now rests with the state courts, the need for federal oversight of the procedures is heightened. To this end, this Petitioner makes the case for focusing more attention on the need for challenges of process rather than result. When the Magistrate Judge's decision reflects Petitioner was denied the opportunity for review contemplated by the state rules of procedure, does the principles of comity, finality, and federalism, mandate a remand to the state courts to grant that contemplated review, in light of the specific finding that counsel in the state PCR lied to Petitioner about the process.

2. When the Inter-American Commission on Human Rights[1] in

[1] Hereinafter (IACHR)

IACHR, Report No. 219/19, Petition 459-08. Admissibility, Anant Kumar Tripati. United States of America. October 24, 2019, has rejected the argument that the Arizona corrective processes comport to the American Declaration, was it error not to afford relief.

FACTS PERTINENT TO CONSIDERATION OF THIS PETITION

¶1.The Magistrate Judge correctly found in her decision that counsel representing Petitioner in the state PCR proceedings, lied to Petitioner and his wife, when he told them that he sought review by the Arizona Court of Appeals, of the decision of the trial court.(App ¶ ~~33~~35)[2] (EX A) This caused the forfeiture/waiver/preclusion.

¶2. The trial court granted counsel until April 11, 2014 to seek review. However counsel[3] in violation of Arizona Rules filed a second request with the Appellate Court. On April 15, 2014 the Appellate court dismissed the Petition as being untimely. It however in plain language granted Petitioner leave to file the request with the trial court. Counsel failed to comply with the directives and ask the trial

[2] Application for Certificate of Appealability and paragraph therein.

[3] Counsel is an experienced criminal defense lawyer in Arizona and knew that in Arizona motion to file a delayed Petition must be filed with the trial court and is routinely granted.

court to seek review. (App ¶ 31)

¶3. As a consequence, the Arizona Appellate Courts failed to provide the liberal review contemplated by Arizona law. They were not afforded the opportunity to review claims as to ineffective assistance, failure to investigate, failure to dismiss for pre indictment delay, motion to suppress statements, motions as to loss of evidence, relief for juror misconduct (Doc 71 pp 6 Para 20 to page 17 line 11). Attached is the draft habeas in which the entire arguments were laid down by Petitioner.)(EX B)

¶4. IACHR, Report No. 219/19, Petition 459-08. Admissibility, Anant Kumar Tripati. United States of America. October 24, 2019, issued a scathing decision finding the Arizona review process not affording the protections afforded by the IACHR. (App ¶ 77)

ARGUMENTS WHY THE PETITION SHOULD BE GRANTED

FIRST ISSUE

¶5 A system in which federal habeas courts do not provide independent review of constitutional claims previously litigated in state court was by no means inevitable. Indeed, prior to AEDPA, if a prisoner had a claim that was cognizable on habeas, and he was able to navigate the procedural obstacles imposed by the Burger and Rehnquist Courts, that prisoner generally had the right to have a federal court independently review his constitutional claim. In other words, irrespective of the state court's view of the merits of the prisoner's constitutional claim, a federal court had the authority, yes even the duty, to grant a writ of habeas corpus to a prisoner who was imprisoned or sentenced in violation of the Constitution. [4]

[4] John H. Blume et al., *In Defense of Noncapital Habeas: A Response to Hoffmann and King*, 96 Cornell L. Rev. 435, 440–43 (2011). Although the difficulties for habeas petitioners imposed by the Burger and Rehnquist Courts pale in comparison to AEDPA and its subsequent interpretation by the Court, the Burger and Rehnquist Courts' pre-AEDPA rulings excessively limited petitioners'

¶6 In 1996, inspired by the bombing of the federal building in Oklahoma City and the desire of President William Clinton, then seeking re-election, to be seen as a law-and order candidate, an eager Congress passed AEDPA. [5] This statute was seen as misguided from its inception because it elevated the desire for finality and comity over the constitutional rights of criminal defendants.

¶7However, despite disagreement with AEDPA, judges who disagreed with the statute, have sought to interpret it as it was

opportunities to vindicate their rights as well. *See, e.g.*, Teague v.Lane, 489 U.S. 288, 310 (1989) (barring the application of new constitutional rules of criminal procedure that were announced after the petitioner's conviction became final); Wainwright v. Sykes, 433 U.S. 72, 87 (1977) (barring federal habeas review of claims that were procedurally defaulted in state court absent a showing of cause and prejudice).

[5] 28 USC § 2254(d), which limits the ability of federal courts to grant habeas relief, was inserted without much advance discussion into a

written rather than to expand on its provisions to a point that threatens the very existence of the Writ.

¶8Through a series of decisions that are highly questionable as a matter of statutory interpretation and have troubling constitutional implications, [6] the Court has deliberately exacerbated the worst aspects of AEDPA. Specifically, the Court has in many instances forbidden federal courts to exercise meaningful review over legitimate constitutional claims, and has instead allowed erroneous constitutional decisions by state courts to stand in the name of comity. As is demonstrated below, a fundamental and far-reaching shift in the Supreme Court's AEDPA jurisprudence came in its needless and highly restrictive view of when a state court

[6] Irons v. Carey, 505 F.3d 846, 859 (9th Cir. 2007) (Reinhardt, J., concurring specially) ("Having granted the courts the authority to review state convictions under our habeas powers, it seems to me inconsistent with our fundamental obligations as judges to require us, to rule for the state regardless of whether it violated the Constitution."), *overruled by* Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010) (en banc).

adjudication of an individual's federal claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" [7]—a precondition established by AEDPA for a federal court to grant the writ in a case in which a claim has been adjudicated on the merits by a state court. The Court's construction of this language is far beyond what the text of AEDPA required and has left state prisoners unlawfully detained or facing execution without any legal recourse in the federal courts.

¶9 Before the Supreme Court overruled lower courts , courts read AEDPA as the ordinary meaning of its text would appear to demand. They explained that the terms "contrary to" and "unreasonable application of" "reflect the same general requirement that federal courts not disturb state court determinations unless the state court has failed to follow the law as explicated by the Supreme Court." Rather than try to impose a "rigid distinction" or "fixed division" between the terms, courts said that the "terms overlap, and cases

[7] 28 U.S.C. § 2254(d)(1) (2012).

may fall into one or both classifications." [8] The result was that courts reviewed state court judgments on questions of federal law simply to determine whether the state court had erred on a matter clearly governed by Supreme Court precedent. Courts respected the reasoned judgments of state courts, but also respected the right of every individual to be free from unlawful imprisonment.

¶10 In ***Williams v. Taylor (Terry Williams),*** [9] the Supreme Court began to seriously restrict the ability of federal courts to offer state prisoners a meaningful recourse for violations of their federal constitutional rights. Contrary to the opinions of circuit courts and to the well-reasoned concurrence of Justice Stevens, Justice O'Connor, writing for a majority of the Justices, claimed except in unusual or exceptional circumstances, that, as a matter of statutory interpretation, "contrary to" and "unreasonable application of" must hold independent, mutually exclusive meanings. [10]

[8] Davis v. Kramer, 167 F.3d 494, 500 (9th Cir. 1999), *vacated*, 528 U.S. 1133 (2000).

[9] *Williams v. Taylor* (*Terry Williams*), 529 U.S. 362 (2000).

[10] *Terry Williams*, 529 U.S. at 404.

¶11Ostensibly for the sake of abiding by this unnecessary and unsupported construction of the statute, the majority forced the "contrary to" language to hold a meaning completely at odds with the ordinary meaning of the term. Selectively citing *Webster's Dictionary*, the majority decided that for a state court decision to be "contrary to" clearly established Supreme Court precedent, it not only had to be wrong, but the state court had to have "applie[d] a rule that contradicts the governing law set forth in [Supreme Court] cases" or "confront[ed] a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrive[d] at a [different] result." Thus, if a state court interpreted Supreme Court precedent erroneously, and arrived at an incorrect legal conclusion, that error alone would not be enough for a federal habeas court to grant relief to the aggrieved petitioner.

¶12Remarkably, in the view of the supposed textualists on the Supreme Court, an erroneous holding on the meaning of Supreme Court precedent leading to an incorrect conclusion does not in itself result in a decision "contrary to" clearly established federal law.

¶13Although the *Terry Williams* majority went to great lengths to define "contrary to" in such a way that it nearly guaranteed that many state prisoners who suffered constitutional violations would not receive relief, it did not define the meaning of "unreasonable application," the other basis for obtaining relief under AEDPA. [11] The Court made only two things clear: First, an "unreasonable application" is different than an erroneous or incorrect application. Second, a state court's application of clearly established law is not reasonable simply because one "reasonable jurist" believes that it is correct.

¶14Thus, after *Terry Williams* courts were left with an interpretive gap to fill when considering AEDPA cases. We filled that gap in *Van Tran v. Lindsey.* There, circuit courts noted that the Court in *Terry Williams* adopted an "objectively unreasonable" standard—the same standard previously used by the Third and Eighth Circuits, which had rejected "other circuits' tests [that] were too deferential [to state courts]. The Supreme Court," "chose to adopt the interpretation of AEDPA that espoused the more robust habeas review."

[11] Van Tran v. Lindsey, 212 F.3d 1143, 1150, 1152 (9th Cir. 2000).

¶15In order to strike the proper balance between an overly deferential test and a test that would reverse any incorrect application of federal law, courts decided to use the "clear error" standard to guide their review of what constitutes an "unreasonable application" of federal law. They explained that "[t]he 'mutual respect' that informs the use of the clear error standard is highly analogous to the comity concerns at issue in habeas cases."

¶16 They quickly learned that they were wrong about what the Court had in mind. **Lockyer v. Andrade** [12] disabused courts of their optimistic view that the Court had chosen to provide habeas petitioners with a fair opportunity to seek relief from unconstitutional deprivation of rights by state courts. Despite the fact that *Terry Williams* had not provided a method for determining reasonableness under AEDPA, the *Andrade* Court treated *Van Tran* as though it had ignored *Terry Williams* rather than attempted faithfully to implement it. In a patent misreading of *Van Tran* and the "clear error" doctrine generally, the Supreme Court claimed that "clear error" review would

[12] Lockyer v. Andrade 538 U.S. 63 (2003).

allow federal habeas courts to reverse state court decisions simply because the state court applied clearly established federal law incorrectly.

¶17 Unfortunately, the Court's extreme construction of "unreasonable application" and "contrary to" is only one example of a larger trend in the Supreme Court's habeas cases, in which the Court's unsurpassed veneration of state courts comes at the expense of individual constitutional rights. Perhaps most prominent among the cases of this ilk is, again, *Harrington v. Richter*. In *Richter*, the Court justified its extremely restrictive view of AEDPA by asserting that "[f]ederal habeas review of state convictions frustrates both the States' sovereign power to punish offenders and their good follow *Terry Williams*, the new majority reversed us by applying a new and transparently incorrect standard.[13]

¶18 In fact, the Court in *Richter* was so concerned about state sovereignty that it constructed[14] a completely indefensible rule

[13] *Richter*, 131 S. Ct. at 786–87 (internal quotation marks omitted).

[14] Calderon v. Thompson, 523 U.S. 538, 555–56 (1998) . Stephen Reinhardt, *The Anatomy of an Execution: Fairness vs. "Process"*, 74

designed to[15] immunize state court decisions that are accompanied by no explanation at all. AEDPA, on its face, applies only when a federal habeas court reviews a claim that was "adjudicated on the merits in State court." [16]

¶19 In *Richter*, the state court denied the petitioner's *Strickland* claim, as well as seven other claims, in an eight-word ruling: "Petition for Writ of Habeas Corpus is DENIED." [17] Although on federal habeas review courts typically " 'look through' to the last state-court decision that provides a reasoned explanation capable of review," [18]this eight-word ruling was the only state court decision on

N.Y.U. L. Rev. 313 (1999

[15] *Richter*, 131 S. Ct. at 787 (quoting Harris v. Reed, 489 U.S. 255, 282 (1989) (Kennedy, J., dissenting)) (internal quotation marks omitted).

[16] 28 U.S.C. § 2254(d).

[17] Respondent's Brief on the Merits at 11–12, *Harrington v. Richter*, 131 S. Ct. 770 (2011) (No. 09-587).

[18] Murray v. Schriro, 745 F.3d 984, 996 (9th Cir. 2014) (quoting Shackleford v. Hubbard, 234 F.3d 1072, 1079 n.2 (9th Cir. 2000)).

the petitioner's *Strickland* claim—a claim the Ninth Circuit later found to be meritorious. [19] It seems reasonable to assume that when a state court, as in *Richter*, issues a decision with no explanation at all, it may not have actually adjudicated the claim at issue on the merits. Certainly, if the state court gives no reasons for its decision, it is difficult for us to know whether the merits of the petitioner's claim were ever given serious consideration.

¶20 The Supreme Court in *Richter* was unmoved by this basic logic. Rather than giving the text of AEDPA a reasonable construction, the Court invented a "presum[ption] that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary."

¶21 In *Johnson v. Williams*, [20] the Court went even further. It extended this presumption to a petitioner's federal claim even when the state court "provided a lengthy, reasoned explanation for its denial of [the petitioner's] appeal, but none of those reasons

[19] Richter v. Hickman, 578 F.3d 944, 968–69 (9th Cir. 2009) (en banc), *rev'd sub nom. Harrington v. Richter*, 131 S. Ct. 770 (2011)

[20] 133 S. Ct. 1088 (2013).

addressed her [federal] claim in any fashion, even indirectly." [21] To add insult to injury, the Court has also adopted the rule that "[w]here a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was *no reasonable basis* for the state court to deny relief." [22]

¶22 In other words, if the state court did not consider a particular basis for its decision, or even silently rejected that basis as inapplicable to the facts before it, that basis may still be a sufficient cause for upholding an unlawful conviction. The result is that state courts can ignore or summarily deny meritorious claims as long as a federal judge can conjure up any possible way that existing Supreme

[21] Williams v. Cavazos, 646 F.3d 626, 639 (9th Cir. 2011), *rev'd sub nom.* Johnson v. Williams, 133 S. Ct. 1088 (2013). In that case, the petitioner raised both a state-law claim and a Sixth Amendment claim challenging the legality of the trial judge's decision to dismiss a juror during deliberations. The state court expressly decided only the petitioner's state-law claim and failed even to mention the federal claim. *Id.* at 634–35.

[22] *Richter*, 131 S. Ct. at 784 (emphasis added).

Court precedent would not compel a contrary conclusion.

¶23This rule is particularly difficult to square with AEDPA's requirement that the state court must have adjudicated the claim on the merits before its decision is entitled to deference.

¶24 What is clear from *Richter* and *Williams* is that the Supreme Court's comfort with dramatically limiting the right to federal habeas review rests in large part on its confidence in the ability of state courts to assess federal constitutional claims. To many, it would seem far more consistent with the principles underlying AEDPA, let alone our federal judicial system generally, were the Court to have limited its confidence to the reasoned judgments of state courts rather than granting them total deference with respect to matters of federal, constitutional rights that they failed to discuss. A basic problem with such total deference is that state courts are simply not as willing or able to recognize infringements of federal constitutional rights in criminal proceedings as are federal courts.

¶25 Although there are many reasons why state courts are unable or unwilling to afford the same dedication to federal constitutional rights as are federal courts, the most obvious is that federal judges have life tenure and salary protection, while many state judges do

their job under the threat of an election challenge if they issue or join in unpopular decisions, especially in death penalty cases. [23] While

[23] Burt Neuborne, *The Myth of Parity*, 90 Harv. L. Rev. 1105, 1127–28 (1977). For example, in California, the voters removed three state supreme court Justices, including the Chief Justice, purportedly because of their views on the death penalty, *see* Robert Lindsey, *Defeated Justice Fearful of Attacks on Judiciary*, N.Y. Times, Nov. 8, 1986, at 7, *available at* http://www.nytimes.com/1986/11/08/us/defeated-justice-fearful-of-attacks-on-judiciary.html ("One issue dominated the campaign that led to [Chief Justice Rose Bird's] removal from the court and that of Justices Grodin and Reynoso: the death penalty."), although in actuality the removal campaign was financed and promoted by business interests seeking their defeat for wholly different reasons, *see* Henry Weinstein, *Rose Bird Eulogized for Compassion, Strength*, L.A. Times, Jan. 10, 2000, at A3, *available at* http://articles.latimes.com/2000/jan/10/news/mn-52560 ("The recall focused on the death sentence issue but was financed in large part by major corporate interests angry at Bird for her decisions on

state judges who decide criminal appeals face the possibility that they will be labeled "soft on crime," federal judges are free to decide such issues secure in the knowledge that the unpopularity of their decisions can pose no threat to their job security. Federal judges also have the advantage of more experience enforcing individual constitutional rights, as well as a special obligation to the Constitution.

¶26Indeed, the protection of the federal Constitution is the fundamental reason we have federal courts: that is simply the most important function federal judges perform. Oddly, both *Richter* and *Williams* justified the presumption that a state court adjudicated a

behalf of workers and consumers."). More recently, voters in Iowa removed three state supreme court Justices, including that state's Chief Justice, due to their votes to legalize same-sex marriage. *See* A.G. Sulzberger, *Ouster of Iowa Judges Sends Signal to Bench*, N.Y. Times, Nov. 4, 2010, at A1, *available at* http://www .nytimes.com/2010/11/04/us/politics/04judges.html?_r=0.

claim on the merits by referring to the heavy caseload of state appellate courts.

¶27 The Court reported, for example, that the "California Supreme Court disposes of close to 10,000 cases a year, including more than 3,400 original habeas corpus petitions." The workload of state judges is, admittedly, a fair reason why state courts frequently do not address (or, more likely, even consider) prisoners' claims of federal constitutional violations.

¶28 However, the fact that resource-constrained state courts have a backlog of cases is not a reason *in favor* of deference; it clearly cuts in the opposite direction, as truly meritorious claims are far more likely to be missed under a system in which state court judges simply are not able to exercise the same degree of care as federal appellate judges. That the Supreme Court draws the opposite conclusion, reasoning that because state courts do not have time to prepare opinions in each of their cases, federal courts must assume that they considered each constitutional claim and defer to their often unexplained denials of relief, is both difficult to comprehend and fundamentally unfair to individuals who may have been convicted or sentenced to life in prison, or even death, in violation of the dictates

of the Constitution.

¶29 Taking into consideration the inherent limitations of state court review, it is even clearer that Justice Stevens was correct when he proclaimed the "independent responsibility" of federal courts to interpret federal law and warned against an interpretation of AEDPA "that would require the federal courts to cede this authority to the courts of the States"—an interpretation that "would be inconsistent with the practice that federal judges have traditionally followed in discharging their duties under Article III of the Constitution." Unfortunately, the interpretation against which Justice Stevens warned is precisely that which governs the writ of habeas corpus today.

¶30 The Supreme Court instructed lower courts that habeas corpus was "governed by equitable principles."[24]. According to Douglas Laycock,[25] "the rule that equity will not act if there is an adequate remedy at law has been used and abused for so many disparate

[24] Fay v. Noia, 372 U.S. 391, 438 (1963)

[25] Douglas Laycock, Restoring Restitution to the Canon, Mich. L. Rev. 929, 947-48 (2012)

purposes over the years that introducing a limited version of it here will inevitably be a source of confusion and mischief'.

¶31 "Jurists of reason would find it debatable whether the petition states a valid claim for denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling" [26]

¶32 Counsel did not seek review (App ¶ ~~49~~ 33) by the Arizona Appeals and Supreme Court, as found by the Magistrate Judge, but lied to Petitioner and his wife that he sought review. (App ¶ ~~34~~ 35 through 62) These claims were not reviewed by Arizona courts. The trial court granted counsel until April 11, 2014 to seek review. However counsel in violation of Arizona Rules filed a second request with the Appellate Court. On April 15, 2014 the Appellate court dismissed the Petition as being untimely. It however granted Petitioner leave to file the request with the trial court. Counsel failed to ask the trial court to seek review. (App ¶ 31 39) They were not afforded the opportunity to review claims as to ineffective assistance, failure to investigate,

[26] Slack v. McDaniel, 529 US 473, 484 (2000)

failure to dismiss for pre indictment delay, motion to suppress statements, motions as to loss of evidence, relief for juror misconduct, and falsification of evidence. (Doc 71 pp 6 Para 20 to page 17 line 11).

¶33 Jurists of reason would find it debatable whether Arizona affords greater review under its rules then that afforded by AEDPA (App ¶ ~~63~~ 64 through 70)

¶34 AEDPA mandated a remand to the state courts to grant that contemplated review, in light of the specific finding that counsel in the state PCR lied to Petitioner about the liberty interests guaranteed by the state process.

¶35 Petitioner was denied procedural due process guaranteed by the state review process.

¶36 Justice Anthony M. Kennedy in a Speech before the American Bar Association Annual Meeting (Aug. 9, 2003). Stated "were we to enter the hidden world of punishment, we should be startled by what we see. . . . While economic costs, defined in simple dollar terms, are secondary to human costs, they do illustrate the scale of the criminal justice system. "

¶37As the primary responsibility for substantive review now rests

with the state courts, the need for federal oversight of the procedures is heightened. To this end, this Petitioner makes the case for focusing more attention on the need for challenges of process rather than result.

¶38 Eliminating federal oversight is not a natural or necessary consequence of diminished success on the merits but instead, a re-orientation of the focus of judges and litigants. [27]

¶39 "Comity, finality, and federalism" failed because no review was had and this, mandated Arizona courts review these claims in accordance with their review process.[28]

[27] John H. Blume, Sheri Lynn Johnson & Keir M. Weyble, In Defense of Noncapital Habeas: A Response to Hoffmann and King, 96 Cornell L. Rev. 435, 473–74 (2011) (advocating for the abandonment of limits on habeas relief such as the procedural default doctrine and § 2254(d).

[28] Duncan v. Walker, 533 U.S. 167, 178 (2001) (explaining that Congress enacted AEDPA both to codify preexisting judge-made doctrines that restricted the habeas corpus remedy for state prisoners and to impose some new restrictions, all for the purpose of

¶40 As the role of deciding the substantive law, often with binding and nearly unreviewable finality, falls to the states; it becomes increasingly important to ensure that states' post conviction systems are procedurally fair and reliable on an individual and a systemic level.

¶41 Consequently—now more than ever—it is important for prisoners to find creative ways to litigate challenges to the state process rather than litigating (or as a means of facilitating) challenges to the result.

¶42One forum that affords an opportunity for a federal challenge based on the inadequacy of state proceedings is federal habeas review. To be sure, federal habeas review is presently centered on challenges to the state court's result, but federal review, even constrained by AEDPA, can function as a meaningful review.

¶43 As in the instant case the Magistrate Judge correctly found in her decision that counsel representing Petitioner, in the sate PCR proceedings, lied to Petitioner and his wife, when he told them that he sought review by the Arizona Court of Appeals, of the decision of the

"further[ing] the principles of comity, finality, and federalism").

trial court. (App ¶ ~~33~~ 35,38 rehearing and/or en banc review should HAVE be granted with instructions Arizona courts afford Petitioner that review which was denied, because counsel lied to the Petitioner and his family. They must have the opportunity to review the claims as to ineffective assistance, failure to investigate, failure to dismiss for pre indictment delay, motion to suppress statements, motions as to loss of evidence, relief for juror misconduct (Doc 71 pp 6 Para 20 to page 17 line 11).(EX B)

SECOND ISSUE

¶ 44 No international tribunal has ever issued as to any one person such a scathing finding a violation of IACHR[29]

¶45 Pursuant to Articles 31 to 34 of its Rules of Procedure the ICHR granted admissibility as to violation of life, liberty and security; equality before law.

¶46 "International law[30] . . . is part of our law and must be

[29] IACHR, Report No. 219/19, Petition 459-08. Admissibility, Anant Kumar Tripati. United States of America. October 24, 2019.

[30] Hilton v. Guyot, 159 U.S. 113, 163 (1895)

ascertained by U.S. courts of justice." The Paquete Habana,[31] ruled in 1900 that "international law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." Sosa v. Alvarez-Machain [32]reaffirmed the "international law is part of our law" principle, noting that domestic U.S. law recognizes international law or the law of nations and stated that "[f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations." Roper v. Simmons, [33]in holding as unconstitutional the execution of minors – persons below the age of eighteen when they committed their crimes – acknowledged "the overwhelming weight of international opinion against the juvenile death penalty" and cited the United Nations Children's Convention, the Civil and Political Rights Covenant, the American Convention on Human Rights, and the African Charter on the Rights and Welfare of the Child Lawrence

[31] The Paquete Habana 175 US at 700

[32] Sosa v. Alvarez-Machain 542 US 692 (2004)

[33]Roper v. Simmons, 543 US 551 (2005)

v. Texas [34] struck down as unconstitutional a Texas statute that prohibited two same sex adults from engaging in intimate sexual relations, citing international jurisprudence and noting that "The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries." Atkins v. Virginia, [35] which ruled that executing the mentally retarded was cruel and unusual punishment forbidden by the U.S. Constitution, noted that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved."

¶47 In 1954, in Brown v. Board of Education, [36] the Court abolished de jure racial segregation, as an affront to the principle of equality, but not as a "human rights" violation.

¶48 Hamdi v. Rumsfeld, [37] suggested that the Geneva and Hague Conventions preclude the indefinite detention of alleged terrorists. In

[34] Lawrence v. Texas 539 US 558 (2003)

[35] Atkins v. Virginia, 536 US 504 (2002)

[36] Brown v. Board of Education 347 US 383(1954)

[37] Hamdi v. Rumsfeld 542 US 507 (2004)

Hamdan v. Rumsfeld, [38]the Court subsequently held that the military commissions devised by the Bush administration violated the Geneva Conventions.

[38] Hamdi v. Rumsfeld 548 US 557 (2006)

CONCLUSION

¶49 The court should grant the petition and remand the matter for issuance of the writ that state courts afford the appellate review which was denied.

Respectfully submitted, THIS 7 DAY OF MAY, 2021

Petitioner Jesus M. Morán

JESUS MANUEL MORAN