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21-6021

IN THE

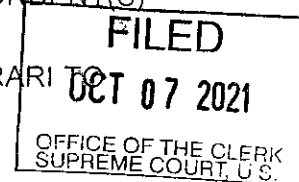
SUPREME COURT OF THE UNITED STATES

ELROY WILLIAM ROBINSON — PETITIONER
(Your Name)

vs.

DAVID HOLBROOK, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



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

PETITION FOR WRIT OF CERTIORARI

ELROY W. ROBINSON (CDCR# A40346)
(Your Name)

C.V.S.P. CB-15-549 P.O. Box 2349
(Address)

Blythe, CA, 92226
(City, State, Zip Code)

- N/A -
(Phone Number)

QUESTION(S) PRESENTED

1. IF A MEMBER, WHILE ON ACTIVE DUTY IN THE ARMED FORCE SERVICE IS ACCUSED OF A CRIME IN WHICH THE STATE HAS AND EXERCISE JURISDICTION; WHEN THAT SAME MEMBER WHO IS ALSO GOVERNED UNDER THE UNIFORM CODE OF MILITARY JUSTICE [10 USCS SECT. 801 et Seq.] IS GIVEN AN ORDER TO TURN HIS OR HERSELF IN TO LAW ENFORCEMENT OFFICERS AND GIVE AN INCRIMINATING STATEMENT THAT ULTIMATELY RESULTS IN HIS OR HER ARREST, PROSECUTION, AND SENTENCE TO CONFINEMENT, IS THERE NOT A CONTRADICTORY APPLICATION OF AUTHORITIES BETWEEN THE TWO JURISDICTIONS THAT VIOLATES HIS OR HER 5TH AND 14TH AMENDMENTS AND ANY OTHER RELATED CONSTITUTIONAL RIGHTS THAT MAY HAVE PRECEDED OR SUCCEEDED THE VIOLATION?

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:

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,

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

☒ is unpublished.

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

☐ reported at _____; or,

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

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,

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

☒ is unpublished.

The opinion of the COURT OF APPEALS, FOURTH APPELLATE OF THE STATE OF CALIFORNIA court appears at Appendix C to the petition and is

☐ reported at _____; or,

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

☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 8-13-2021.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 8-13-2021, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 8-15-2018.
A copy of that decision appears at Appendix _____.

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

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

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

PETITION FOR A WRIT OF CERTIORARI

PETITIONER ELOY W. ROBINSON RESPECTFULLY PETITIONS FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, PETITIONER'S APPLICATION FOR CERTIFICATE OF APPEALABILITY.

OPINIONS BELOW

THE FOLLOWING OPINIONS AND ORDERS BELOW ARE PERTINENT HERE, ALL OF WHICH ARE UNPUBLISHED: [1] OPINION ON DIRECT APPEAL BY THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT ONE, AFFIRMING PETITIONER'S CONVICTION AND SENTENCE (12-28-17); [2] ORDER (5-18-20) AND JUDGMENT (5-18-20) BY U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA (HON. CYNTHIA BASHANT), DENYING PETITION FOR WRIT OF FEDERAL HABEAS CORPUS (5-18-20); [3] DISTRICT COURT ORDER DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY (5-18-20); [4] ORDER BY NINTH CIRCUIT COURT OF APPEALS DENYING REQUEST FOR CERTIFICATE OF APPEALABILITY (8-13-21). (SEE APPENDIX FOR COPIES)

STATEMENT OF JURISDICTION

THE DISTRICT COURT AND THE COURT OF APPEALS FOR THE NINTH CIRCUIT DENIED PETITIONER'S REQUEST FOR CERTIFICATE OF APPEALABILITY. IN *HOHN V. UNITED STATES*, 524 U.S. 236 (1998), THIS COURT HELD THAT, PURSUANT TO 28 USC SECT. 1254 (1), THE UNITED STATES SUPREME COURT HAS JURISDICTION, ON CERTIORARI, TO REVIEW A DENIAL OF

1 A REQUEST FOR CERTIFICATE OF APPEALABILITY BY A CIRCUIT JUDGE OR
2 PANEL OF A FEDERAL COURT OF APPEALS.

3 4 STATUTORY PROVISIONS INVOLVED

5
6 THE RIGHT OF A STATE PRISONER TO SEEK FEDERAL HABEAS CORPUS RELIEF
7 IS GUARANTEED IN 28 USC SECT. 2254. THE STANDARD FOR RELIEF UNDER
8 "AEDPA" IS SET FORTH IN 28 USC SECT. 2254 (1)(1).

9 10 11 STANDARD OF REVIEW: 12 DENIAL OF CERTIFICATE OF APPEALABILITY

13
14 IN MILLER-EL V. COCKRELL, 537 U.S. 322, 123 S.Ct. 1029 (2003), THIS COURT
15 CLARIFIED THE STANDARDS FOR ISSUANCE OF A CERTIFICATE OF APPEALABILITY
16 [HEREAFTER "COA"]:

17 A PRISONER SEEKING A COA NEED ONLY DEMONSTRATE A "SUBSTANTIAL
18 SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT." A PETITIONER SATISFIES
19 THIS STANDARD BY DEMONSTRATING THAT JURISTS OF REASON COULD DISAGREE
20 WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OR THAT
21 JURISTS COULD CONCLUDE THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE
22 ENCOURAGEMENT TO PROCEED FURTHER.... WE DO NOT REQUIRE PETITIONER
23 TO PROVE, BEFORE THE ISSUE OF A COA, THAT SOME JURISTS WOULD GRANT
24 THE PETITION FOR HABEAS CORPUS. INDEED, A CLAIM CAN BE DEBATABLE
25 EVEN THOUGH EVERY JURIST OF REASON MIGHT AGREE, AFTER THE COA HAS BEEN
26 GRANTED AND THE CASE HAS RECEIVED FULL CONSIDERATION, THAT PETITIONER WILL
27 NOT PREVAIL. *Id.*, 123 S.Ct. AT 1034, CITING SLACK V. MCDANIEL, 529 U.S.
28 473, 484 (2000).

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PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

ON AUGUST 29, 2013, ELOY W. ROBINSON (HEREAFTER PETITIONER) AND HIS WIFE KHALILAH MARIN-ROBINSON, ACCOMPANIED BY LIEUTENANT GARZA FRANCISCO X. WENT INTO THE NATIONAL CITY POLICE DEPARTMENT (HERE AFTER NCPD) TO SPEAK WITH DETECTIVE SHEPARD. AFTER PETITIONER'S WIFE AND HIMSELF WERE INTERVIEWED RESPECTIVELY, HE WAS ARRESTED ON CHILD SEXUAL ALLEGATIONS.

ON MARCH 27, 2014, DEFENSE COUNSEL MARK E. MADDISON FILED A MOTION TO SUPPRESS CONFESSION. PROSECUTOR ALSO FILED AN OPPOSITION TO MOTION TO SUPPRESS CONFESSION. PETITIONER'S MOTION WAS DENIED AND QUICKLY THEREAFTER A PLEA BARGAIN WAS PRESENTED - RESULTING IN PETITIONER PLEADING GUILTY AND CONSEQUENTLY BEING SENTENCED TO 30 YEARS IN PRISON.

ON JUNE 28, 2017, PETITIONER FILED, IN THE SENTENCING COURT, A PETITION FOR WRIT OF HABEAS CORPUS (HSC11618) CHALLENGING THE COURT'S PROCEDURES AND RULING IN THE CASE. THE PETITION WAS DENIED.

ON SEPTEMBER 14, 2017, PETITIONER FILED A SECOND HABEAS CORPUS (HSC11618-SECOND PETITION), THIS TIME REVISING THE FORMER GROUNDS UNDER THE UMBRELLA OF INEFFECTIVE ASSISTANCE OF COUNSEL (HERE AFTER IAC). THE SECOND PETITION WAS DENIED.

ON DECEMBER 15, 2017, PETITIONER SERVED AND FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT DIVISION ONE (D073267). UPON REVIEWED, THE PETITION WAS DENIED.

ON APRIL 24, 2018, PETITIONER SERVED AND FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE CALIFORNIA SUPREME COURT. THE PETITION WAS DENIED.

ON FEBRUARY 19, 2019, PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. THE PETITION WAS DENIED. ON SEPTEMBER 10, 2019, PETITIONER

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PETITION FOR WRIT OF CERTIORARI

1 FILED A REPLY TO ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS. THE
2 TRAVERSE AND COA WAS DENIED.

3 ON JUNE 7, 2020, PETITIONER FILED A MOTION FOR CERTIFICATE OF
4 APPEALABILITY IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.
5 THE MOTION WAS DENIED; THIS, EXHAUSTING ALL REMEDIES THIS POINT.

6 7 STATEMENT OF PERTINENT FACTS

8 A. CONVERSATION WITH KHALILAH MARIN-ROBINSON

9 THE ISSUE IN QUESTION INVOLVE THE VALIDITY OF PETITIONER'S STATEMENT GIVEN
10 TO LAW ENFORCEMENT. ON AUGUST 28, 2013, WHILE EMPLOYED BY THE U.S. NAVY,
11 PETITIONER RECEIVED A PHONE CALL FROM HIS WIFE KHALILAH STATING HE MUST COME
12 HOME BECAUSE POLICE HAD TAKEN THEIR CHILDREN. WHEN ~~AND~~ PETITIONER ARRIVED
13 AT HOME SHE TOLD HIM SHE WAS IN COMMUNICATION WITH A DETECTIVE SHEPHARD.
14 SHE FURTHER ASSERTED THAT HE MADE AN 8:30 AM APPOINTMENT TO MEET WITH HER
15 THE NEXT DAY AND THAT PETITIONER MUST ACCOMPANY HER. WHEN PETITIONER
16 ASKED FOR CERTAINLY AS TO WHETHER OR NOT DETECTIVE SHEPHARD ASKED TO SPEAK
17 WITH HIM PERSONALLY, HIS WIFE CONFIRMED YES - INSISTING HE WANTED TO SPEAK
18 WITH BOTH OF THEM. SHE ADDED THE MEETING WAS TO BE A STEP TOWARD
19 REUNITING WITH THEIR CHILDREN OR THE POSSIBILITY OF GETTING ARRESTED.

20 AT THAT POINT PETITIONER INQUIRED ABOUT THE PURPOSE OF THE
21 MEETING, TO WHICH HIS WIFE REPLIED, QUESTIONS ABOUT "CHILD ABUSE SEXUAL
22 ALLEGATIONS." SHE ADDED HER DAUGHTER CHARYKHA C. GALVEZ, THEN PETITIONER'S
23 STEP DAUGHTER MADE THE COMPLAINT TO DETECTIVE SHEPHARD - THIS HIS PURPOSE
24 FOR SUCH PERSONAL REQUEST. THE NATURE OF THE NEWS, COMPOLED BY THE REQUEST
25 WAS ENOUGH TO SEND PETITIONER INTO A STATE OF DURESS, THEREBY SUBMITTING TO
26 LAW ENFORCEMENT, BELIEVING HE WAS AT A POINT WHERE HE HAD NO CHOICE BUT
27 TO COMPLY WITH THE AUTHORITY. SOLELY IN THIS REASONING HE AGREED TO GO IN
28 AND SPEAK WITH DETECTIVE SHEPHARD THE FOLLOWING MORNING.

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PETITION FOR WRIT OF CERTIORARI

1 While in discussion with his wife, petitioner's commanding officer,
2 Commander William H. Baxter called to find out why their children were taken,
3 to which he responded, he will update him when he finds out. Following
4 the phone call, however, his wife urged him to go in and disclose everything
5 to his commander prior to going to the NCPD. Still in a state of
6 duress, he also agreed ^{to} this request.

7 The expanded definition of duress includes whatever destroys a
8 person's free agency and constrains that person to do something against
9 his or her will (in re Baltins (1989) 212 Cal. app. 3d 6684, 260 Cal. Rptr 403).
10 Duress may be exercised by threats, importunity, or any species of mental
11 coercion (in re Marriage of Gonzalez (1976) 57 Cal. app. 3d 736, 744, 129 Cal.
12 Rptr. 566). Duress exists if one party intentionally used threats or pressure
13 to induce action or non action to the third party's detriment and the
14 coerced party was thereby induced to assent and had no reasonable
15 alternative. Duress is either direct or implied (Vol. 17 Chap 215 Sect 215.21
16 Part II Legal Background Duress).

17 Now given petitioner's 13-year experience of obeying orders from
18 personnel in authority and the fact that Detective Shephard was exercising
19 authority, he did not believe he had free will in the matter, so as
20 a result, he obeyed just as he was obligated to do with any orders given
21 by superior military personnel. And though Detective Shephard may have
22 avoided physical intimidation in his asking, he definitely achieved psychological
23 duress because petitioner, in his experience, understood his request
24 as one that must be complied with. Therefore, it can not now be said,
25 under the standard of voluntariness, petitioner's actions were free and
26 voluntary if it's clear Detective Shephard's arrangement for petitioner
27 to come in and speak with him was the only reason that drove him to agree
28 in the first place.

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PETITION FOR WRIT OF CERTIORARI

1 THE FOLLOWING IS A TEST OF VOLUNTARINESS: IS THE CONFESSION THE PRODUCT
2 OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE BY ITS MAKER? IF IT IS, IF HE IS
3 {448F. SUPP. 793} WILLED TO CONFESS, IT MAY BE USED AGAINST HIM. IF IT IS NOT, IF HIS
4 WILL WAS OVERBORN AND HIS CAPACITY FOR SELF-DETERMINATION CRITICALLY
5 IMPAIRED, THE USE OF HIS CONFESSION OFFENDS DUE PROCESS [CITES OMITTED].
6 THE LINE OF DISTINCTION IS THAT AT WHICH GOVERNING SELF-DIRECTION IS LOST AND
7 COMPELSION, OF WHATEVER NATURE OR WHOEVER INFUSED, PROPELS OR HELPS
8 PROPEL THE CONFESSION.

10 B. CONVERSATION WITH CDR. WILLIAM H. BAXTER

12 ON THURSDAY, AUGUST 29, 2013 AT ABOUT 0630, PETITIONER WENT TO HIS SHIP
13 TO SPEAK TO COMMANDER BAXTER WHILE HIS WIFE WAITED OUTSIDE. PETITIONER THEN
14 TOLD HIS COMMANDER HE WAS GOING TO THE NCPD TO SPEAK WITH DETECTIVE SHEPARD
15 ABOUT CHILD MOLESTATION ALLEGATIONS; HOWEVER, BEFORE PETITIONER WENT INTO ANY
16 FURTHER DETAIL, COMMANDER BAXTER STOPPED HIM. HE THEN CALLED PETITIONER'S
17 DEPARTMENT HEAD, LIEUTENANT F. GARZA AND COMMANDED THAT HE ACCOMPANIED
18 PETITIONER TO THE INTERVIEW AND BRING BACK A REPORT.

19 PETITIONER DEPARTED HIS COMMAND SHIP EVEN MORE INDUCED BECAUSE
20 WHAT HE CLAIMED HE WAS GOING TO DO WAS NOW BEING ENFORCED BY COMMANDER
21 BAXTER THROUGH THE ORDER HE GAVE LIEUTENANT GARZA TO BE BY HIS SIDE. THIS IS
22 EVIDENT CONSIDERING THE FACT THAT AS A JUNIOR OFFICER AT THE TIME, PETITIONER
23 FELT COMPELLED TO OBEY THE COMMAND OF HIS SUPERIOR OFFICER. COMMANDER
24 BAXTER'S AGREEMENT FOR PETITIONER TO SPEAK WITH DETECTIVE SHEPARD, BACKED
25 BY HIS ORDER, FURTHER COMPOUNDED PETITIONER'S SUBMISSIVE DEMEANOR TO
26 COMPLY WITH AUTHORITIES.

27 THE SHORT EXCHANGE BETWEEN COMMANDER BAXTER AND PETITIONER,
28 MORE SPECIFICALLY, THE RESULTS OF IT, CONFLICTS WITH DUE PROCESS CLAUSE FOR

1 TWO REASONS: FIRSTLY, IT WAS THE PRODUCT OF AN INVOLUNTARY STATEMENT BY
2 PETITIONER THROUGH IMPROPER INDUCEMENT BY HIS COMMANDER. IT IS KNOWN
3 IN MILITARY ENVIRONMENT, INFLUENCE, WHETHER PROPER OR IMPROPER IS NOT
4 DIFFICULT TO ACHIEVE WHEN THERE IS AN APPARENT DISPARITY BETWEEN RANK
5 AND POSITION. YET, THIS WAS PRECISELY THE CASE OF PETITIONER. TAKE FOR
6 INSTANCE, VOL. 17 CHAP 214 SECTION 214.40: UNDUE INFLUENCE DEFINES THE USE
7 BY ANYONE WHOM CONFIDENCE IS REPOSED BY ANOTHER OR WHO HOLDS A REAL OR
8 APPARENT AUTHORITY OVER ANOTHER, OF SUCH CONFIDENCE OR AUTHORITY FOR THE
9 PURPOSE OF OBTAINING AN UNFAIR ADVANTAGE OF THE PERSON; THE PERSON TAKING
10 ADVANTAGE OF OTHER'S WEAKNESS OF MIND; OR TAKING A GROSSLY OPPRESSIVE
11 AND UNFAIR ADVANTAGE OF OTHER'S NECESSITIES OR DISTRESS.

12 THE STATUTORY DEFINITION IS NOT DISPOSITIVE. THE TRIER OF FACTS MUST
13 DECIDE FROM THE ENTIRE CONTEXT IF A PERSON'S WILL WAS OVERBORN, AND IF HE OR
14 SHE WAS INDUCED TO DO OR FORBEAR FROM DOING AN ACT THAT HE OR SHE WOULD NOT
15 DO, OR WOULD DO IF ACTED FREELY (KIEHLEY V. CIVIL SERVICE BOARD (1970) 11 Cal.
16 app. 3d 443, 451 89 Cal. Rptr. 809, STEWART V. MARVIN (1956) 139 Cal. app. 2d 78).

17 SECONDLY, PETITIONER'S STATEMENT WAS A DIRECT RESULT OF COMMANDER
18 BAXTER'S ORDER, BEING FINAL AND UNCHALLENGED. RECALL, PETITIONER, AT THE
19 TIME WAS AN ACTIVE DUTY MEMBER AND WAS UNDER FEDERAL JURISDICTION - PARTICULARLY
20 THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ HERE AFTER) [10 USC SEC 801 ET SEQ].
21 HAVING PARTICIPATED IN BOTH ROLES OF GIVING COMMANDS AND TAKING COMMANDS,
22 PETITIONER WAS WELL ACQUAINTED WITH SECT. 890 ART. 90 AND SECT. 892 ART. 92 OF
23 THE UCMJ AS IT RELATES TO CONSEQUENCES FOR DISOBEYING ORDERS.

24 THAT BEING SAID, SECT. 890 ART. 90 STATES: ANY PERSON SUBJECT TO THIS
25 SECTION [10 USC SEC 801] WHO WILLFULLY DISOBEYS A LAWFUL COMMAND OF THAT
26 PERSON'S SUPERIOR (COMMISSIONED) OFFICER SHALL BE PUNISHED -

27 (1) IF THE OFFENSE IS COMMITTED AT ANY TIME OF WAR, BY DEATH OR SUCH OTHER
28 PUNISHMENT AS A COURT-MARTIAL MAY DIRECT; AND

(2) IF THE OFFENSE IS COMMITTED AT ANY OTHER TIME, BY SUCH PUNISHMENT, OTHER THAN DEATH, AS COURT-MARTIAL MAY DIRECT.

SECT. 892 ART. 92 STATES ANY PERSON SUBJECT TO [JOUS'S SECT. 801] WHO--

- (1) VIOLATES OR FAILS TO OBEY ANY LAWFUL GENERAL ORDER OR REGULATION;
- (2) HAVING KNOWLEDGE OF ANY OTHER LAWFUL ORDER ISSUE BY A MEMBER OF THE ARMED FORCES, WHICH IT IS HIS DUTY TO OBEY, FAILS TO OBEY THE ORDER; OR
- (3) IS DERELICT IN THE PERFORMANCE OF HIS DUTIES; SHALL BE PUNISHED AS A COURT-MARTIAL MAY DIRECT.

FURTHERMORE, UNDER SECT 890, IT MUST BE SHOWN THAT ACCUSED RECEIVED CERTAIN COMMAND FROM CERTAIN OFFICER, THAT SUCH OFFICER WAS SUPERIOR OFFICER TO ACCUSED, AND THAT ACCUSED WILLFULLY DISOBEYED COMMAND; WHILE, ON THE OTHER HAND, PROOF NECESSARY TO ESTABLISH VIOLATION OF SECT. 892 REQUIRES ONLY THAT CERTAIN LAWFUL ORDER WAS ISSUED BY A MEMBER OF THE ARMED FORCES, THAT ACCUSED HAD KNOWLEDGE OF ORDER, THAT IT WAS HIS DUTY TO OBEY ORDER, AND THAT HE FAILED TO DO SO (UNITED STATES V. KEITH, 3CMA-579 (1953)).

TAKING INTO ACCOUNT THESE GOVERNING AUTHORITIES AND PETITIONER'S INHERENT NATURE TO OBEY THEM, WHEN COMMANDER BAXTER GAVE LIEUTENANT GARZA THE ORDER TO ESCORT PETITIONER TO THE NCPD TO SPEAK WITH DETECTIVE SHEPARD, NOT ONLY DID IT REMOVE PETITIONER'S LIBERTY TO EXERCISE FREE WILL IN THE MATTER, BUT IT INFLUENCE THE PRODUCT OF AN INVOLUNTARY STATEMENT AGAINST PROCEDURAL DUE PROCESS. NOTWITHSTANDING, HIS COMMANDER, AT NO TIME DURING THEIR SHORT CONVERSATION, ADVISE HIM ABOUT SELF-INCRIMINATION. AT THE VERY LEAST COMMANDER BAXTER SHOULD HAVE COMPLIED WITH SECT. 831. ART. 31 [COMPULSARY SELF-INCRIMINATION PROHIBITED] THAT STATES:

- (a) NO PERSON SUBJECT TO THIS CHAPTER [JOUS'S SECT. 801] MAY COMPEL ANY PERSON TO INCRIMINATE HIMSELF OR ANSWER ANY QUESTION, THE ANSWER TO WHICH MAY TEND TO INCRIMINATE HIM.
- (b) NO PERSON MAY INTERROGATE, OR REQUEST ANY STATEMENT FROM AN ACCUSED OR A

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PETITION FOR WRIT OF CERTIORARI

PERSON SUSPECTED OF AN OFFENSE WITHOUT FIRST INFORMING HIM OF THE NATURE OF THE ACCUSATION AND ADVISING HIM THAT HE DOES NOT HAVE TO MAKE ANY STATEMENT REGARDING THE OFFENSE OF WHICH HE IS ACCUSED OR SUSPECTED AND THAT ANY STATEMENT MADE BY HIM MAY BE USED AS EVIDENCE AGAINST HIM.

(d.) NO STATEMENT OBTAINED FROM ANY PERSON IN VIOLATION OF THIS ARTICLE, OR THROUGH THE USE OF COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT MAY BE RECEIVED IN EVIDENCE AGAINST HIM IN A TRIAL. THE FACT THAT COMMANDER BAXTER VIOLATED SECT. 831 ART. 31, RENDERED PETITIONER'S STATEMENT INVALID.

C. INTERVIEW WITH DETECTIVE SHEPHARD

THOUGH DETECTIVE SHEPHARD BEGAN THE INTERVIEW BY TELLING PETITIONER HE WAS NOT UNDER ARREST, HE WAS FREE TO LEAVE; PETITIONER NEVER FELT FREE - THE DOOR BEING CLOSED WITH TWO DETECTIVES BEFORE HIM AND LIEUTENANT GARZA BY HIS SIDE. MOREOVER, PETITIONER INITIALLY TRIED TO AVOID ANSWERING DETECTIVE SHEPHARD'S QUESTIONS AS TO THE REASON FOR COMING IN; HOWEVER, WHEN HE FLEXED HIS POWER AND AUTHORITY THROUGH INTIMIDATING STATEMENTS LIKE; "YOU DARN WELL KNOW WHY YOU'RE SITTING HERE RIGHT NOW TALKING TO ME... AND IT'S NOT BECAUSE OF YOU HITTING YOUR KIDS... SO HERE'S WHAT, I'M GONNA ASK YOU ONE MORE TIME TO BE CLEAR. LET'S NOT BEAT AROUND THE BUSH AND WASTE MY TIME...." (SEE INTERVIEW TRANSCRIPT. P. 15 L. 9-14).

FOR FEAR OF DETECTIVE SHEPHARD AND FOR THE PRESENCE OF HIS SUPERIOR OFFICER, PETITIONER TOLD DETECTIVE SHEPHARD WHAT HE WANTED TO HEAR. IN FACT, THROUGHOUT THE INTERVIEW PETITIONER REPEATEDLY TRIED TO AVOID ANSWERING DETECTIVE SHEPHARD'S QUESTIONS, BUT EACH TIME HE SHOWED HE WAS INCHARGED. PETITIONER FELT DETECTIVE SHEPHARD WAS FORCIBLY, BUT MENTALLY CONTROLLING THE INTERVIEW BECAUSE EVERYTIME HE WANTED TO HEAR SOMETHING SPECIFIC, HE WOULD SAY SOMETHING LIKE;

(11)

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1 "I ALSO THINK THIS ONE THING ABOUT YOUR STORY... THAT DOES NOT MATCH UP
2 WITH WHAT CHARYKHA IS REPORTING... (P. 9 LINE 15-21). THIS MADE PETITIONER
3 VERY SUSPECTIVE TO HIM - ESPECIALLY WHEN HE MADE SUBTLE THREATS LIKE;
4 YOU DIDN'T LET IT ALL OUT. THIS IS YOUR LAST CHANCE RIGHT NOW TO... IF
5 YOU THINK THAT THERE'S SOMETHING MAJOR ELSE THAT'S GONNA HAPPEN BECAUSE
6 YOU DID THAT, THAT'S NOT THE CASE. I MEAN IT IS WHAT IT IS. (P. 10 L. 13-21).

7 IT WAS ONLY AFTER DETECTIVE SHEPARD GOT THE INFORMATION HE
8 WANTED, THAT HE READ PETITIONER HIS MIRANDA RIGHTS AND HAD HIM
9 CONFIRM HIS STATEMENT. PETITIONER WAS THEN ARRESTED AND TAKEN TO THE
10 SAN DIEGO CENTRAL JAIL FOR BOOKING AND PROCESSING.

11 PETITIONER, IN HIS WRIT OF HABEAS CORPUS RAISED NUMEROUS CLAIMS REGARDING
12 HIS INTERVIEW WITH DETECTIVE SHEPARD, PARTICULARLY, THE TACTICS USED IN
13 OBTAINING HIS STATEMENT AND NOT BEING GIVEN HIS MIRANDA RIGHTS WAIVER.
14 HOWEVER, THE ISSUE PETITIONER IS HERE RAISING GOES BEYOND WHETHER OR
15 NOT DETECTIVE SHEPARD VIOLATED HIS MIRANDA RIGHTS, BUT MORE SO TO TEST ITS
16 VALIDITY AGAINST THE NATURE OF HIS STATEMENT.

17 CONSIDER THE FOLLOWING STATEMENTS WITH RESPECT TO THE PRODUCT OF
18 PETITIONER'S CONFESSION: FOR THE PURPOSE OF DETERMINING, UNDER DUE PROCESS
19 CLAUSE OF THE FEDERAL CONSTITUTION'S 14TH AMENDMENT, WHETHER A STATE CRIMINAL
20 DEFENDANT'S CONFESSION HAS BEEN COERCED, (1) A FINDING OF COERCION NEED NOT
21 DEPEND UPON ACTUAL VIOLENCE BY A GOVERNMENT AGENT, (2) A CREDIBLE THREAT
22 IS SUFFICIENT (ORDER ENFORCED BY LT. GARZA) AND (3) COERCION CAN BE MENTAL
23 AS WELL AS PHYSICAL (CONSTITUTIONAL LAW SECT. 840.5) THEREFORE, ADMISSION OF
24 A COERCED CONFESSION VIOLATES DUE PROCESS. JACKSON V. DEUNO (1964) 378 US 368,
25 84 S. CT 1774. LIKEWISE, A CONFESSION WHICH IS GIVEN AS A RESULT OF EITHER THREATS
26 OR IMPROPER INDUCEMENTS MUST BE ENTIRELY DISREGARDED IN A COURT OF LAW.
27 (PEOPLE V. JONE, SUPRA; PEOPLE V. WILLIAMS 20 CAL. 2D 273). ALSO CONSIDER,
28 WITH RESPECT TO PETITIONER'S CONFESSION, ACTS INDUCED BY BURESS WHICH OPERATES

1 ONLY ON THE MIND, AND FALLS SHORT OF ACTUAL PHYSICAL COMPELSION, ARE NOT VOID
2 IN LAW, BUT ARE VOIDABLE ONLY AT THE ELECTION OF HIM WHOSE ACTS WERE INDUCED
3 BY THEM. FURTHERMORE, DURESS IMPLIES FEEBLENESS ON ONE SIDE, OVERPOWERING
4 STRENGTH ON THE OTHER SIDE. HERE, IT IS SUGGESTED THE FEEBLENESS IS ON THE SIDE
5 OF THE GOVERNMENT OF U.S.; OVERPOWERING STRENGTH ON THE SIDE OF A SINGLE PRIVATE
6 COOPERATION. THEREFORE, THE ELECTION TO DISAFFIRM AN ACT INDUCED BY
7 DURESS MUST BE EXERCISED PROMPTLY, WHERE IT HAS OPERATED TO ALTER LEGAL
8 RIGHTS BY TRANSFERRING THEM TO ANOTHER. APART FROM UNLAWFUL INFLUENCE FROM
9 DETECTIVE SHEPARD AND COMMANDER BAXTER THROUGH LIEUTENANT GARZA, THERE'S
10 NO EVIDENCE TO SUGGEST THAT PETITIONER ACTED FREELY AND VOLUNTARILY IN
11 GIVING A STATEMENT.

12 ADDITIONALLY, THE COURTS ARGUED THAT "BASED ON THE INTERVIEW TRANSCRIPT,
13 IT IS CLEAR ROBINSON UNDERSTOOD HE WAS NOT "IN CUSTODY" AT THE TIME OF THE INTERVIEW
14 AND WAS FREE TO TERMINATE THE QUESTIONING AND LEAVE IF HE SO CHOOSE," AGAINST
15 DEFENSE COUNSEL'S ARGUMENT THAT, "DESPITE BEING TOLD THE INTERVIEW WAS
16 VOLUNTARY, THE ATMOSPHERE OF THE INTERVIEW SUGGESTED A REASONABLE PERSON IN
17 ROBINSON'S POSITION WOULD NOT HAVE FELT FREE TO LEAVE." (APP. B PP. 13-16). THOUGH
18 BOTH ARGUMENTS MISSED ONE KEY FACTOR, THE LATTER MORE ACCURATELY DESCRIBED
19 PETITIONER'S RESPONSE TO THE INTERVIEW ENVIRONMENT SUBJECTED TO.

20 INDEED, PETITIONER WASN'T ONLY ESCORTED BY LIEUTENANT GARZA, HE ALSO
21 REMAINED BY HIS SIDE THE ENTIRE TIME - UP UNTIL HIS ARREST. THEREFORE FROM THE
22 MOMENT PETITIONER ARRIVED AT THE NCPD, TO THE COMMENCEMENT, AND ALL THROUGH
23 THE INTERVIEW, HE NEVER FELT FREE TO LEAVE. FURTHERMORE, LIEUTENANT GARZA'S
24 COMMANDING PRESENCE WAS POWERFUL ENOUGH TO OVERBORNE PETITIONER'S FREE WILL AND
25 THUS RESULTING IN THE PRODUCT OF HIS STATEMENT. IT SHOULD ALSO BE NOTED THAT
26 LIEUTENANT GARZA'S PRESENCE WAS NOT IN SUPPORT OF PETITIONER; HE WAS THERE
27 ON DIRECT ORDERS FROM COMMANDER BAXTER - TO REPRESENT THE NAVY. CONSIDERING
28 THESE FACTS, IT CANNOT BE SAID THAT PETITIONER'S STATEMENT WAS FREE AND VOLUNTARY.

1 IF, IN THE ORDER GIVEN BY COMMANDER PAXTER, HE STATED, "LIEUTENANT ROBINSON IS
2 GOING TO THE NCPD TO SPEAK WITH A DETECTIVE SHEPARD AND HE MIGHT BE ARRESTED.
3 GO WITH HIM AND REPORT BACK." TO WHICH LIEUTENANT GARZA CARRIED OUT TO ITS FULLEST.

4 STATEMENTS TAKEN IN VIOLATION OF MIRANDA CAN NOT BE USED AS PROOF OF GUILT,
5 SEE HARRIS V. NEW YORK, 401 U.S. 222, 224 91 Sct 643 (1971). LIKEWISE, A MISAPPLICATION
6 OF MIRANDA IN AN INVOLUNTARY STATEMENT CAN NOT STAND. WHERE THE VOLUNTARINESS OF A
7 CONFESSION IS EVALUATED BY REVIEWING BOTH THE POLICE CONDUCT IN EXTRACTING THE
8 STATEMENTS AND THE EFFECTS OF THAT CONDUCT ON THE SUBJECT, SEE MILLER V. FENTON,
9 474 U.S. 104, 116 106 Sct 415 (1985). "THE TEST IS WHETHER, CONSIDERING THE TOTALITY OF
10 CIRCUMSTANCES, THE GOVERNMENT OBTAINED THE STATEMENT BY PHYSICAL OR PSYCHOLOGICAL
11 COERCION OR BY IMPROPER INDUCEMENT SO THAT THE SUSPECTS' WILL WAS OVERBORNE."
12 UNITED STATES V. LEON GUERRERO, 847 F2d 1363, 1366 (9TH Cir. 1988) (CITING HAYNES V.
13 WASHINGTON, 373, 118 S.2d 513-14, 83 Sct. 1336 (1963). NOTWITHSTANDING, "SUBTLE PSYCHOLOGICAL
14 COERCION SUFFICES... AT TIMES MORE EFFECTIVELY TO OVERBORNE A RATIONAL INTELLECT AND
15 FREE WILL." HASWORTH, 350 F3d. AT 1027; UNITED STATES V. TINGLE, 658 F2d. 1332, 1335
16 (9TH Cir. 1981).

17 PETITIONER MAINTAINS HIS MIRANDA RIGHTS WAIVER WAS INVALID NOT ONLY BECAUSE IT
18 WAS NOT GIVEN TO HIM PRIOR TO HIS STATEMENT BEING TAKEN, BUT BECAUSE ^{HIS STATEMENT} IT WAS INVOLUNTARY
19 DUE TO POLICE COERCION AND IMPROPER INDUCEMENT BY SUPERIOR OFFICERS, IN VIOLATION
20 OF HIS 5TH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION, AND ALSO HIS POST
21 MIRANDA STATEMENT WAS INVOLUNTARY DUE TO POLICE COERCION AND IMPROPER INDUCEMENT
22 BY SUPERIOR OFFICERS, IN VIOLATION OF HIS 14TH AMENDMENT RIGHT TO DUE PROCESS.

23 D. MOTION TO SUPPRESS CONFESSION

24
25
26 PETITIONER'S INITIAL DEFENSE AGAINST THE TACTICS USED BY DETECTIVE
27 SHEPARD WAS THE VIOLATION OF HIS 5TH AND 14TH AMENDMENTS, ALONG WITH HIS MIRANDA
28 RIGHTS AND DUE PROCESS RIGHTS. PETITIONER FIRST BROUGHT THESE CONCERNS TO

1 public defender Juliana Humphreys who began working on a motion to
2 suppress confession. Soon after, Attorney Mark E. Madison was retained and
3 everything Mrs. Humphreys was working on, she gave to him. Petitioner then
4 reiterated to Mr. Madison his concerns regarding the way Detective Shepherd
5 obtained his confession. Attorney Madison agreed there were violations in
6 petitioner's constitutional rights and gave his word to further investigate
7 starting with interviewing Khalilah, Commander Baxter, and Detective Shepherd.

8 However, on March 27, 2014 when Mr. Madison presented the motion to
9 suppress confession, it was clear he failed in his preparations. The contents
10 of the motion indicated he made no efforts to further investigate. His preparations
11 were limited only to those information given to him by Mrs. Humphreys and
12 petitioner. There were no statements or supporting documents from interviews
13 to bolster his arguments.

14 Despite the recount of petitioner with regards to the events that led to
15 his confession, Attorney Madison was solely focused on the violation of petitioner's
16 due process rights - as stated within the motion. In it he raised the issue
17 Detective Shepherd violated petitioner's Miranda warnings/waiver because he
18 was subjected to custodial interrogation without being admonished of his rights
19 and because his Miranda waiver was not voluntary made (see motion to suppress p. 17).
20 There was nothing about the totality of circumstances to determine if his confession
21 was voluntary or not. The people also presented an opposition to the motion to
22 suppress confession, in it they refuted petitioner's claim by asserting he
23 voluntarily turned himself in and gave an incriminating statement. The motion
24 to suppress confession was denied.

25 To qualify for the 5th Amendment privilege, a communication must be
26 compelled, testimonial, and incriminating. For a communication to be testimonial
27 it must be one that explicitly relates factual assertion or disclose information. For
28 a compelled, testimonial statement to be incriminating, the detriment to

1 INDIVIDUAL WHO MADE THE STATEMENT MUST BE REAL AND APPRECIABLE AND NOT A DANGER
2 OF AN IMAGINARY AND SUBSTANTIAL CHARACTER. INCRIMINATING STATEMENTS ARE NOT
3 ONLY THOSE THAT WOULD SUPPORT A CONVICTION IN AND OF ITSELF, BUT ALSO THOSE WHICH
4 WOULD FURNISH A LINK IN THE CHAIN OF EVENTS/EVIDENCE NEEDED TO PROSECUTE AN
5 INDIVIDUAL. TO ESTABLISH A PROCEDURAL CLAIM OF DUE PROCESS UNDER 5TH AMENDMENT,
6 A LITIGANT MUST SHOW THE GOVERNMENT DEPRIVED HIM OF A LIBERTY OR PROPERTY INTEREST
7 WITHOUT PROVIDING NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD. MATTHEWS V.
8 ELDRIDGE, 424 U.S. (1976) (SHAIBAN V. KOUNANS, 2020 U.S. DIST 184425).

9 THE 14TH AMENDMENT PROCEDURAL DUE PROCESS CLAUSE STANDARD PROHIBITS
10 A STATE FROM "DEPRIVING ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE
11 PROCESS LAW." IT FURTHER STATES: "[A] PROCEDURAL DUE PROCESS ANALYSIS INVOLVES
12 A TWO-STEP INQUIRY; (1) DOES THE COMPLAINING PARTY HAVE A PROTECTED LIBERTY OR
13 PROPERTY INTEREST AND IF SO, (2) DOES THE AVAILABLE PROCESS COMPORT WITH ALL
14 CONSTITUTIONAL REQUIREMENTS." BAUSS V. PLYMOUTH TWP, 408 F. SUPP. 2D 363, PARK
15 V. THOMPSON, 851 F.3D 910 (2017); UNITED STATES EX REL HENRY V. WILKINS, 348 F.2D 844 (1965).

16 IN THIS CASE, THE STATE COURT DENIED PETITIONER'S FED. HABEAS CORPUS
17 ASSERTING HIS ARGUMENT OF COERCED CONFESSION IN VIOLATION OF DUE PROCESS CLAUSE
18 FAILED (APPENDIX B p. 16). IT FURTHER STATES "THE INTERVIEW TECHNIQUES USED BY
19 DETECTIVE SHEPARD DO NOT SHOCK THE CONSCIENCE AND THE CIRCUMSTANCES OF
20 THE INTERROGATION DO NOT SUGGEST THAT ROBINSON WAS COERCED OR HIS WILL OVERBORN."
21 HOWEVER, CONTRARY TO THE ABOVE COURT ARGUMENTS (SEE P. 17-B), PETITIONER,
22 DURING THE INTERVIEW EXPERIENCE JUST THAT - A SHOCK OF THE CONSCIENCE. BOTH
23 SUPPORTING DOCUMENTS AND COURT RECORDS WILL SHOW DETECTIVE SHEPARD
24 USED SUBTLE COERCIVE TACTICS TO CREATE CIRCUMSTANCES THAT ILLICITED THE
25 PARTICIPATION OF PETITIONER'S WIFE, COMMANDER, AND DEPARTMENT
26 HEAD TO BRING ABOUT HIS CONFESSION. MOREOVER, EVEN IF DETECTIVE SHEPARD'S
27 USE OF COERCION TO OBTAIN PETITIONER'S STATEMENT DOES NOT MEET THE HIGH
28 LEVEL REQUIRED BY THE SUPREME COURT TO RENDER A CONFESSION INVOLUNTARY,

1 IT IS STILL IN VIOLATION OF PROCEDURAL DUE PROCESS UNDER 5TH AND 14TH
2 AMENDMENTS SINCE IT CONFLICTS WITH COMMANDER BAXTER'S USE OF AUTHORITY
3 UNDER UCMJ ARTS. 90 AND 92 TO OVERBORNE PETITIONER'S USE OF FREE WILL.

4 THIS FACT IS EVIDENT, GIVEN PETITIONER DID EXACTLY WHAT DETECTIVE
5 SHEPARD ASKED OF HIM THROUGH AN ORDER GIVEN BY COMMANDER BAXTER. NOTE,
6 HIS COERCIVE TACTICS WERE SO EFFECTIVE, THAT PETITIONER, IN THE PRESENCE OF A
7 UNIFORMED SUPERIOR OFFICER, COULD NOT AVOID ANSWERING HIS QUESTIONS, THOUGH
8 HE INITIALLY TRIED. JUST BEING AWARE THAT LIEUTENANT GARZA WAS BY HIS SIDE
9 ONLY TO MAKE SURE HE SPEAKS WITH DETECTIVE SHEPARD WAS ENOUGH TO CREATE AN
10 ENVIRONMENT WHERE PETITIONER FELT PSYCHOLOGICALLY TRAPPED. PETITIONER'S
11 INDUCED PSYCHOLOGICAL DURESS FURTHER RESULTED IN COGNITIVE IMPAIRMENT.
12 THIS TOO IS EVIDENT WHEN ASKED BY DETECTIVE SHEPARD IF ANYONE FORCED HIM OR
13 ORDERED HIM TO COME IN - TO WHICH HE ANSWERED NO. HOWEVER, AT THE TIME,
14 PETITIONER UNDERSTOOD COMMANDER BAXTER DID NOT GIVE HIM A DIRECT ORDER TO
15 GO IN, WHILE AT THE SAME TIME COMPLETELY MISSING THE FACT THAT THE ORDER WAS GIVEN
16 INDIRECTLY THROUGH LIEUTENANT GARZA, WHO SAW IT THROUGH. LIKEWISE, WHILE HE WAS
17 AWARE COMMANDER BAXTER DID NOT PHYSICALLY FORCED HIM TO GO IN AND GIVE A
18 STATEMENT, HE WAS, AT THE SAME TIME UNAWARE THAT COMMANDER BAXTER HAD
19 PSYCHOLOGICALLY FORCED HIM THROUGH THE ORDER GIVEN TO LIEUTENANT GARZA. THERE-
20 FORE, BEING COGNIZANT OF THE FORMER AND NOT THE LATTER, PETITIONER ANSWERED
21 ACCORDINGLY. IT SHOULD ALSO BE NOTED, PETITIONER HAS ALWAYS MAINTAINED IT WAS
22 NEVER HIS INTENTION TO GO IN AND SPEAK WITH DETECTIVE SHEPARD, BUT THROUGH
23 COERCION HE COMPLIED WITH THE REQUEST. THEREFORE, HIS STATEMENT GIVEN
24 AS A RESULT IS INVOLUNTARY AND INADMISSABLE.

25 26 E. PLEA BARGAINING - TO- SENTENCING

27
28 A PLEA BARGAIN AGREEMENT CAME IMMEDIATELY AFTER PETITIONER'S

(17)

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1 MOTION WAS DENIED. PETITIONER WAS IN THE HOLDING CELL WHEN ATTORNEY MADISON
2 CAME WITH THE PLEA AGREEMENT. IT APPEARS MR. MADISON WAS CENTERED ON
3 THE LOW-HIGH SIDE PRISON TERM OF THE AGREEMENT, BECAUSE THAT WAS THE ONLY
4 SECTION HE SPENT MUCH TIME ON.

5 HIS MOTIVE WAS TO TRY AND GET PETITIONER THE LOW-SIDE TERM, WHICH
6 WAS 24 YEARS; ON THE OTHER HAND, PETITIONER'S INTENTIONS WERE TO
7 CHALLENGE THE RULING OF THE JUDGE IN REGARDS TO HIS DENIED MOTION. ATTORNEY
8 MADISON THEN SAID TO HIM, "IF YOU PLEAD GUILTY, WE CAN APPEAL LATER." UPON HIS
9 COUNSEL, PETITIONER PLEADED GUILTY AND WAS CONSEQUENTLY SENTENCED TO THE
10 MAX TERM OF 30 YEARS IMPRISONMENT ON JULY 2, 2014. PETITIONER THEN ATTEMPTED
11 TO REACH OUT TO ATTORNEY MADISON ABOUT A PATH TOWARDS THE APPEAL PROCESS -
12 TO WHICH HE RESPONDED; "I'M SORRY ELOY, YOUR RETAINING FEE FOR MY SERVICE WAS
13 UP TO PRELIMINARY HEARINGS ONLY, YOU'RE GONNA HAVE TO FIGURE THIS ONE OUT."
14 ATTORNEY MADISON'S ABANDONMENT LEFT PETITIONER WITH THE PERCEPTION HE KNOWINGLY
15 TOOK ON A CASE HE WAS NOT QUALIFIED FOR OR EXPERIENCED IN; JUST TO MAKE A QUICK
16 BUCK, DISREGARDING THE DAMAGES HE CREATED.

17 IN THIS CASE, PETITIONER RAISED TWO GROUNDS OF INEFFECTIVE ASSISTANCE OF
18 COUNSEL (HERE AFTER IAC) AGAINST MR. MADISON: (1) IAC FOR FAILURE TO INVESTIGATE AND
19 PREPARE MOTION TO SUPPRESS^{CONFESION} AND (2) IAC FOR GIVING ERRONEOUS ADVICE TO PLEAD
20 GUILTY. HOWEVER, THE COURT DENIED BOTH GROUNDS CLAIMING PETITIONER FAILED TO
21 ESTABLISH, BY SUPPORTING EVIDENCE, COUNSEL'S PERFORMANCE FELL BELOW AN
22 PROTECTIVE STANDARD OF REASONABLENESS SETH FOR IN THE 6TH AMENDMENT.

23 THE 6TH AMENDMENT PROVIDES THAT AN ACCUSED IN CRIMINAL CASE PROSECUTION
24 HAS A RIGHT TO THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE. BECAUSE HIS RIGHT TO
25 COUNSEL IS CRITICAL TO THE ABILITY OF THE ADVERSARIAL SYSTEM TO PRODUCE JUST RESULTS,
26 THE RIGHT OF COUNSEL IS THE RIGHT TO EFFECTIVE COUNSEL. (STRICKLAND V. WASHINGTON 1984).

27 THE BENCHMARK FOR JUDGING INEFFECTIVE CLAIMS ARE, "WHETHER COUNSEL'S CONDUCT
28 SO UNDERMINE THE PROPER FUNCTIONING OF THE ADVERSARIAL PROCESS THAT THE TRIAL

COURT CAN NOT BE RELIED ON AS HAVING PRODUCED A JUST RESULT. "Idid.

A DEFENDANT WHO REQUESTS REVERSAL OF A CONVICTION DUE TO HIS COUNSEL'S DEFECTIVE ASSISTANCE MUST: (1) SHOW THAT HIS ATTORNEY'S PERFORMANCE WAS DEFICIENT AND (2) THAT THE DEFICIENT PERFORMANCE PREJUDICE HIS DEFENSE. Id at p. 117.

SIMILARLY, WHEN A PERSON PLEADS GUILTY BASED ON THE ADVICE OF COUNSEL, "THE VOLUNTARINESS OF THE PLEA DEAL DEPENDS ON WHETHER COUNSEL'S ADVICE WAS WITHIN RANGE OF COMPETENCE DEMANDED OF ATTORNEYS IN CRIMINAL CASES." (HILL V. LOCKHART 1985). ALSO, A PLEA IS INVOLUNTARY WHEN THE DEFENDANT DOES NOT KNOW ALL THE DIRECT CONSEQUENCES OF THE PLEA AGREEMENT. (PEOPLE V. AGUIRRE (2011)). WHEREAS A KNOWING AND VOLUNTARY PLEA "PRESUPPOSES THE DEFENDANT KNOWS ALL THE DIRECT CONSEQUENCES OF HIS PLEA."

THE UNITED STATES SUPREME COURT HAS HELD THAT REASONABLY EFFECTIVE ASSISTANCE MEANS THAT AN ATTORNEY MUST EXERCISE DILIGENCE IN THE INVESTIGATION AND PRESENTATION OF A CLIENT'S CASE. IN MOST CASES, A LACK OF DILIGENCE HAS BEEN FOUND WHEN COUNSEL HAS FAILED TO INVESTIGATE A DEFENSE ADEQUATELY (WIGGINS V. SMITH (2003)). (ROMPILLA V. BEARD (2005)).

WITH RESPECT TO WHAT "CONSTITUTES AN OBJECTIVE STANDARD OF REASONABLENESS" FOR ATTORNEY'S PERFORMANCE, THE UNITED STATES SUPREME COURT HAS DECLINED TO ARTICULATE SPECIFIC GUIDELINES FOR APPROPRIATE ATTORNEY CONDUCT, AND INSTEAD EMPHASIZED THAT "THE PROPER MEASURE OF ATTORNEY PERFORMANCE REMAIN SIMPLY REASONABLENESS UNDER PREVAILING PROFESSIONAL NORMS." WIGGINS V. SMITH, 539 US 510 (2003). ACCORDINGLY, "BEFORE COUNSEL UNDERTAKES TO ACT OR NOT TO ACT, COUNSEL MUST MAKE A RATIONAL AND INFORMED DECISION ON STRATEGY AND TACTICS FOUNDED UPON ADEQUATE INVESTIGATION AND PREPARATION." IN RE MARQUEZ, 1 CAL 4TH 584, 602 (1992). HENCE, THOUGH A COURT MUST PRESUME THAT THE COUNSEL'S CONDUCT FALLS WITHIN THE "WIDE RANGE OF REASONABLE PROFESSIONAL ASSISTANCE," SEE BELL V. CONE 535 U.S. 685, 702 (2002), COUNSEL'S ALLEGED TACTICAL DECISION MUST BE SUBJECTED TO A MEANINGFUL SCRUTINY" SEE IN RE AVENA, 12 CAL. 4TH 694 (1996). IN STRICKLAND, THE SUPREME COURT EMPHASIZED THAT "TACTICAL"

1 DECISIONS, ALTHOUGH ENTITLED TO HEAVY MEASURE OF DEFERENCE IN UNDERTAKEN
2 FOLLOWING A REASONABLE INVESTIGATION, ARE ONLY AS REASONABLE AS THE INVESTIGATION
3 ON WHICH THEY ARE BASED.

4 THE DUTY TO INVESTIGATE IS PART OF A DEFENDANT'S RIGHT TO REASONABLE COMPETENT
5 COUNSEL. INDEED, THE PRINCIPLES ARE SO FUNDAMENTAL THAT FAILURE TO CONDUCT A
6 REASONABLE PRE-TRIAL INVESTIGATION MAY IN ITSELF AMOUNT TO "IAC." UNITED STATES V.
7 TUCKER, 716 F.2d 576, 583 n. 16 (8TH CIR. 1983). THE AMERICAN BAR ASSOCIATION STATES
8 THE DUTY AS FOLLOWS:

9 IT IS THE DUTY OF THE LAWYER TO CONDUCT A PROMPT INVESTIGATION
10 OF THE CIRCUMSTANCES OF THE CASE AND TO EXPLORE ALL AVENUES LEADING
11 TO FACTS RELEVANT TO THE MERITS OF THE CASE AND THE PENALTY IN THE
12 EVENT OF CONVICTION. THE INVESTIGATION SHOULD ALWAYS INCLUDE EFFORTS
13 TO SECURE INFORMATION IN THE POSSESSION OF THE PROSECUTION AND
14 LAW ENFORCEMENT AUTHORITIES.

15 ABA STANDARD 4-4-1. MOREOVER, "THE INVESTIGATION PROCESS SHOULD BEGIN IMMEDIATELY
16 ON APPEARANCE AS COUNSEL FOR A DEFENDANT." IS SUMMARIZED IN THE COMMENTARY
17 TO STANDARD 4-3 [EMPHASIS ADDED]:

18 AN ADEQUATE DEFENSE CAN NOT BE FRAMED IF THE LAWYER DOES NOT
19 KNOW WHAT IS LIKELY TO DEVELOP AT TRIAL... IN CRIMINAL LITIGATION, AS
20 IN OTHER MATTERS, THE INFORMATION IS THE KEY GUIDE TO DECISIONS AND
21 ACTIONS. THE LAWYER WHO IS IGNORANT OF THE FACTS OF THE CASE CANNOT
22 SERVE AS THE DEFENDANT EFFECTIVELY.

23 FURTHERMORE, THE DUTY TO INVESTIGATE DOES NOT DEPEND ON LAWYER'S ABILITY OR
24 EXPERIENCE: "THE MOST ABLE AND COMPETENT LAWYER IN THE WORLD CAN NOT RENDER
25 EFFECTIVE ASSISTANCE IN THE DEFENSE OF HIS CLIENT IF HIS LACK OF PREPARATION FOR
26 TRIAL RESULTS IN HIS FAILURE TO LEARN OF READY AVAILABLE FACTS WHICH MIGHT HAVE
27 AFFORDED HIS CLIENT A LEGITIMATE JUSTIFIABLE DEFENSE." HARRIS V. BLODGETT, 853 F. Supp.
28 1239, 1255 (W.D. WASH. 1994) [CITING TUCKER, SUPPRA, AND McQUEEN V. SWENSEN, 498 F.2d (8TH CIR. 1994).

1 In violation of these basic principles, defense counsel in this case failed
2 to further investigate the scope of events that led to petitioner's confession (though
3 petitioner provide sufficient leads), failed to interview key personnel even
4 after promising to interview them, and failed to discover pertinent information
5 regarding the true cause of petitioner's confession. This fundamental failure
6 to determine the facts from any source was deficient performance. See Harris v.
7 Blodgett, supra; see also in re Thomas, supra, 37 Cal. 4th 1249, at p. 1264.

8 Even though, in petitioner's case the courts claim judicial review is "highly
9 deferential" under standards of Strickland and habeas courts allow a wide
10 latitude for counsel's judgment, the fact that state procedural due process applied
11 to petitioner, directly conflicts with federal jurisdiction also applied to him by
12 a navy commander, makes it apparent that counsel's performance fell below
13 the above set standards. Therefore, Mr. Madison's decision not to investigate or
14 interview key witness, but rather to give erroneous advice not only proved
15 detrimental to petitioner but also constitute to IAC, especially in light of the
16 totality of circumstances.

17 REASONS FOR GRANTING THE WRIT 18 ARGUMENT SUMMARY

19 The following factors were all present in this case:

20 (1) Law enforcement officers, after receiving complaint against petitioner,
21 deliberately delayed arrest and instead made an appointment with petitioner's
22 wife to bring him in. The resulting conversation led petitioner's wife to insist
23 that both of them must go in for the sake of their children and that there is
24 a possibility that both of them could be arrested. For fear he might
25 cause trouble by not complying and the fact that he was already in the habit
26 of obeying authorities, he responded in duress. The court may have denied the
27 fact that petitioner suffered duress from conversation with his wife, but
28 it cannot ignore the fact that the result of that event led to further

1 CONVERSATION WITH HIS COMMANDER WHICH ENDED IN IMPROPER INDUCEMENT IN THE
2 PRODUCT OF HIS STATEMENT.

3 (2) PETITIONER, AFTER INFORMING HIS NAVY COMMANDER THAT HE MUST MEET WITH LAW
4 ENFORCEMENT OFFICER, HIS COMMANDER GAVE AN ORDER TO HIS DEPARTMENT HEAD OFFICER TO
5 ESCORT HIM TO THE NCPD - INSTRUCTING HIM THAT PETITIONER WILL GIVE LAW ENFORCEMENT
6 OFFICERS A STATEMENT AND THAT HE MIGHT BE ARRESTED. THE SUPERIOR OFFICER CARRIED
7 OUT THAT ORDER TO ITS FULLEST. ADDED TO DURESS, PETITIONER FURTHER EXPERIENCED
8 IMPROPER INDUCEMENT THROUGH HIS COMMANDER'S USE OF AUTHORITY IN GIVING THE
9 ORDER TO ENSURE HE MET WITH THE DETECTIVES AND GIVE A STATEMENT.

10 (3) IN PETITIONER'S CASE, THE EVIDENCE IN QUESTION IS THE LEGITIMACY OF HIS
11 STATEMENT TO LAW ENFORCEMENT OFFICERS; ONE THAT CAN EASILY BE PROVEN IF
12 TESTED AGAINST BOTH STATE PROCEDURAL DUE PROCESS AND FEDERAL UCMJ
13 UTILIZED IN OBTAINING HIS STATEMENT.

14 (4) STATE COURTS' REFUSAL TO HOLD AN EVIDENTIARY HEARING INTO OR ACKNOWLEDGE THE
15 USE OF UCMJ ARTICLES 90 AND 92 THAT CONFLICTS WITH ITS PROCEDURAL DUE PROCESS
16 USED, NOT ONLY DEPRIVED PETITIONER OF EVIDENCE THAT COULD HAVE EXONERATED
17 HIM BUT ALSO VIOLATED HIS 14TH AMENDMENT.

18 (5) STATE COURTS' REFUSAL TO HOLD AN EVIDENTIARY HEARING INTO OR ACKNOWLEDGE THE
19 ORDER GIVEN BY PETITIONER'S COMMANDING OFFICER TO OBTAIN STATEMENT, WHILE AT THE
20 SAME TIME UPHOLDING LAW ENFORCEMENT OFFICERS USE OF MIRANDA RIGHTS WARNINGS
21 AND DUE PROCESS, VIOLATES HIS CONSTITUTIONAL RIGHTS UNDER 5TH AMENDMENT.
22 MOREOVER, THE COURT'S REJECTION OF PETITIONER'S CLAIM FOR USE OF COERCION, WHILE
23 APPLYING BROAD TOLERANCE TO LAW ENFORCEMENT OFFICERS ACTIONS IN OBTAINING STATEMENT,
24 DEPRIVED HIM OF A FAIR TRIAL, ESPECIALLY WHEN IT OVER LOOKS THE FACT THAT IT WAS A
25 NAVY COMMANDER'S ORDER THAT ULTIMATELY GOT PETITIONER TO THE INTERVIEW AND
26 FURTHER GOT HIM TO MAKE A STATEMENT.

27 (6) DEFENSE COUNSEL'S FAILURE TO INVESTIGATE THE CONFLICTING USE OF STATE
28 PROCEDURAL DUE PROCESS AGAINST UCMJ ARTICLES 90 AND 92 MADE IT

(22)

PETITION FOR WRIT OF CERTIORARI

1 impossible for him to obtain substantial evidence / grounds favorable to petitioner.
2 therefore, his performance violated petitioner's 6th Amendment.

3 (7.) Trial Courts' Denial of petitioner's Motion to Suppress Confession over prosecutor's
4 opposition to Motion to Suppress Confession was a direct result of Counsel's
5 failure to investigate and prepare an effective Motion. Furthermore, the
6 lower courts decided to uphold Trial Courts' Denial, even after petitioner, in his
7 petition for writ of Habeas Corpus, provided evidences that Federal Jurisdiction
8 (UICMJ) applied to him conflicts with State procedural due process also applied
9 to him, violated his 5th Amendment.

10 (8.) State Courts rejection of petitioner's grounds of IAC for failing to investigate
11 and interview key individuals in the case and for giving erroneous advices to
12 petitioner denied him the basic constitutional guarantees under the 6th
13 Amendment.

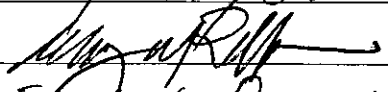
14 (9.) Regardless of what order due process clause was applied to petitioner, in this case,
15 consider Miranda Rights for instance, at the moment it is discovered that conflicting
16 authorities directly influenced the product of petitioner's statement, and the Miranda
17 rights or statement was not rendered invalid, a violation of procedural due process
18 under the 5th and 14th Amendments has occurred. Thus preventing petitioner from
19 being exonerated.

20 CONCLUSION

21 Based on the foregoing, this court should grant the petition for writ of Certiorari
22 and order a full briefing. May every desire be done in this case.

23
24 DATED: October 7, 2021

25 Respectfully Submitted:

26 
27 ELROY W. ROBINSON

28 PETITIONER IN PROPRIA PERSONA