

Nº 21-7872

Supreme Court, U.S.  
FILED

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In The Supreme Court of the United States

STEVEN GUARDADO,

*Petitioner,*

v.

THE HON. BILLY K. SIPE, JR.,  
MOHAVE COUNTY SUPERIOR COURT; AND THE HONORABLE  
JON W. THOMPSON, MAURICE PORTLEY, AND P. K. NORRIS,  
JUDGES OF DIVISION ONE, ARIZONA COURT OF APPEALS;  
STATE OF ARIZONA, REAL PARTY IN INTEREST,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ARIZONA  
ON DIRECT COLLATERAL REVIEW

PETITION FOR WRIT OF CERTIORARI

ORIGINAL

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## QUESTIONS PRESENTED

STEVEN GUARDADO FILED AN APPLICATION FOR A WRIT OF MANDAMUS IN THE SUPREME COURT OF ARIZONA REQUESTING AN ORDER TO THE STATE TRIAL COURT TO COMPLY WITH FEDERAL CONSTITUTIONAL PROVISIONS, INCLUDING THOSE AFFORDING THE GUARANTEES OF THE CONFRONTATION, COMPULSORY PROCESS, AND DUE PROCESS CLAUSES, AS INTERPRETED BY OTHER STATE COURTS OF LAST RESORT, AND US DISTRICT COURTS.

THE ARIZONA SUPREME COURT DISMISSED THE APPLICATION FOR MANDAMUS, REFUSING TO CONSIDER THE MATTER, THEREBY DENYING AN IMPORTANT FEDERAL QUESTION THAT WAS NOT, BUT SHOULD BE, SETTLED BY THIS COURT.

THUS, THIS CASE PRESENTS THE FOLLOWING QUESTIONS:

- I. WHETHER THE DECISION OF THE ARIZONA SUPREME COURT PREVENTS APPLICATION OF THE CONFRONTATION, DUE PROCESS, AND COMPULSORY PROCESS CLAUSES OF THE U S CONSTITUTION, REQUIRING THE STATE TO GIVE A CRIMINAL DEFENDANT THE OPPORTUNITY TO INSPECT AND TEST THE SOURCE CODE, THE RESULTS FROM WHICH THE STATE INTENDS TO USE AGAINST HIM AT TRIAL.
- II. WHETHER THE ARIZONA SUPREME COURT FAILED TO APPLY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.
- III. WHETHER THE ARIZONA SUPREME COURT FAILED TO REQUIRE THE STATE TO FOLLOW STATE AND FEDERAL STATUTES FOR COMPASSIONATE RELEASE OF ELDERLY OR MEDICALLY VULNERABLE INMATES DURING A PANDEMIC.

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## PETITION FOR A WRIT OF CERTIORARI

STEVEN GUARDADO RESPECTFULLY PETITIONS FOR A WRIT OF CERTIORARI TO REVIEW THE ORDER OF THE SUPREME COURT OF ARIZONA IN GUARDADO v. SIPE, et al.; ARIZONA, REAL PARTY IN INTEREST, NO M-21-0076.

### OPINIONS BELOW

A "NOTICE OF AND APPLICATION FOR A WRIT OF MANDAMUS" PURSUANT TO ARS § 12-2021 AND ARS § 12-2027 FILED WITH THE ARIZONA SUPREME COURT IN NO M-21-0076 ON 22 DECEMBER 2021, WAS DISPOSED BY DUTY JUSTICE JAMES P. BEANE OF THAT COURT, BY AN ORDER, ISSUED 2/15/22.

A MOTION FOR RECONSIDERATION OF THAT ORDER WAS FILED WITH THE STATE SUPREME COURT ON 2 MARCH 2021, BUT IN LIKE FASHION, WAS DISPOSED BY SIMPLE ORDER BY DUTY JUSTICE ANN A. SCOTT TIMMER, ISSUED 3/4/22.

### JURISDICTION

THIS COURT'S JURISDICTION APPLIES UNDER 28 USC § 1257 (a) IN ITS AUTHORITY TO REVIEW DECISIONS OF THE COURT OF LAST RESORT OF ANY OF THE STATES OF THE UNION, WHICH IN THIS CASE WOULD FORM A DIRECT COLLATERAL REVIEW. THE DISCRETION OF THE COURT IS REQUESTED IN AID OF ITS JURISDICTION TO CONSIDER APPLICATION OF 28 USC § 1651 AS IT DEEMS NECESSARY AND APPROPRIATE.

### STATUTORY PROVISIONS INVOLVED

|                                   |                            |
|-----------------------------------|----------------------------|
| ARIZ. CONST. ART. 6, § 5 (1), (4) | PROVISIONS FOR MANDAMUS    |
| ARS § 12-111                      | STATUTES AS RULES OF COURT |
| ARS § 12-2021 - ARS § 12-2030     | RULES OF COURT: MANDAMUS   |
| ARIZ. CONST. ART. 6, § 24         | COURT COMMISSIONERS        |
| ARS §§ 12-211 - 213               | COURT COMMISSIONERS        |
| AZ. S. Ct. R. 96(a)(11)           | POWERS OF COMMISSIONERS    |

## STATEMENT OF THE CASE

MR. GUARDADO WAS ARRESTED ON 19 MAY 2014; INDICTED ON 29 MAY 2014; AND ARRAIGNED ON 6 JUNE 2014 FOR FIVE COUNTS ALLEGING POSSESSION OF METHAMPHETAMINE, AND OF ITS SALE.

SHORTLY THEREAFTER, HE MOVED THE COURT TO EXCLUDE EVIDENCE IN THE TRIAL. THE HON. BILLY K. SIRE, JR., A COURT COMMISSIONER OF THE MOHAVE COUNTY SUPERIOR COURT, DENIED THE MOTION, EVEN THOUGH UNDER ARIZONA SUPREME COURT RULE 96(a)(1) A COURT COMMISSIONER WAS PROHIBITED FROM HEARING OR DETERMINING THE MOTION. MOHAVE COUNTY, NO CR 2014-00716.

ON 11 FEBRUARY 2015, MR. GUARDADO WAS CONVICTED FOLLOWING A JURY TRIAL BEFORE COMMISSIONER SIRE, JR., OF POSSESSION OF METHAMPHETAMINE FOR SALE, FOR WHICH COMMISSIONER SIRE, JR., LATER SENTENCED HIM TO TWENTY SEVEN (27) YEARS IN PRISON. MR. GUARDADO FILED A DIRECT APPEAL IN THE ARIZONA COURT OF APPEALS, WHICH AFFIRMED, IN NO 1 CA-CR 15-0198, 3/31/16.

ON 22 DECEMBER 2021, MR. GUARDADO SOUGHT A WRIT OF MANDAMUS FROM THE ARIZONA SUPREME, SEEKING AN ORDER FROM THE COURT, TO LOWER COURTS, TO FOLLOW THE DECISIONS OF THIS COURT, OTHER STATE AND FEDERAL COURTS, AND STATE LAW. SEE, APPENDIX, COURT DECISIONS.

MR. GUARDADO WAS NOT CHALLENGING HIS CONVICTION DIRECTLY, AND HE WAS PRECLUDED FROM FILING POST-CONVICTION PETITIONS. THE ARIZONA SUPREME COURT DENIED THE APPLICATION ON 2/15/22, STATING THAT THE APPLICATION WAS AN ISSUE FOR POST-CONVICTION REMEDIES. SEE, ID. A MOTION FOR RECONSIDERATION WAS FILED THEREAFTER, BUT DENIED ON 3/4/22, WITHOUT DISCUSSION. SEE, APPENDIX.

### REASONS FOR GRANTING THE PETITION

- I. THE DECISION OF THE ARIZONA SUPREME COURT PREVENTS APPLICATION OF THE CONFRONTATION, DUE PROCESS, AND COMPULSORY PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION. REQUIRING THE STATE TO GIVE A CRIMINAL DEFENDANT THE OPPORTUNITY TO INSPECT AND TEST THE SOURCE CODE OF ANY INSTRUMENTED APPARATUS, THE RESULTS FROM WHICH THE STATE INTENDS TO USE AGAINST HIM AT TRIAL.

THE ARIZONA SUPREME COURT DISMISSED GUARDADO'S APPLICATION FOR MANDAMUS RELIEF IN ERROR WHERE HE REQUESTED THE COURT TO ISSUE A WRIT REQUIRING ARIZONA COURTS TO FOLLOW THE HOLDINGS OF OTHER STATE AND FEDERAL COURTS AS THEY HAVE INTERPRETED DECISIONS OF THIS COURT. THE ORDER OF THE ARIZONA SUPREME COURT PERMITS ARIZONA COURTS TO CONTINUE TO DENY CRIMINAL DEFENDANTS ACCESS TO SOURCE CODES, WHICH WILL BE USED AGAINST THEM AT TRIAL.

A. THE DECISION OF THE ARIZONA SUPREME COURT IS IN CONFLICT WITH  
OTHER STATE COURTS OF LAST RESORT AND FEDERAL COURTS

IN STATE V. UNDERDAHL, 767 NW 2d 677 (MN 2009), THE MINNESOTA SUPREME COURT HELD THAT A SOURCE CODE ACCESS WAS ESSENTIAL TO SAFEGUARDING A DEFENDANT'S CONSTITUTIONAL RIGHTS TO CONFRONTATION, COMPULSORY PROCESS, AND DUE PROCESS. THE COURT STATED THAT A DEFENDANT IN A CRIMINAL CASE NEED ONLY SHOW THAT THE SOURCE CODE WAS RELEVANT TO HIS CASE TO BE ABLE TO INSPECT AND TEST THE SOURCE CODE.

IN STATE V. PICKETT, 246 A. 3d 279 (NJ Sup. Ct. App. Div. 2021), THE COURT EVALUATED A DEFENDANT'S REQUEST TO INSPECT AND TEST THE SOURCE CODE FROM A HEARING BASED ON DAUBERT V. MERRILL DOW, 509 US 579 (1993), AND FRY V. US, 293 F. 1013 (1923). THE COURT HELD THAT SOURCE CODE OFTEN HAD ERRORS, AND SPECIFIC CODES WERE NOT KNOWN OR ACCEPTED BY THE COMPUTER SCIENCE FIELD AS ACCURATE, THEREFORE BECAUSE THE SOURCE CODE WAS BEING USED AGAINST A DEFENDANT AT TRIAL, THE SOURCE CODE MUST BE DISCLOSED TO THE DEFENDANT PRIOR TO TRIAL SO HE MAY GET MEANINGFUL ACCESS TO IT IN ORDER TO ASSESS ITS RELIABILITY AND ACCURACY.

IN US V. MICHAUD, 2016 WL 537263 AT 1-2 (WD WA 1/28/16), THE DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON CONCLUDED THAT A DEFENDANT MUST BE GIVEN ACCESS TO THE SOURCE CODE OF EVIDENCE THE GOVERNMENT INTENDED TO USE AGAINST HIM AT TRIAL, OR THE EVIDENCE WOULD BE EXCLUDED AT TRIAL.

EACH OF THESE COURTS RELIED ON DECISIONS OF THIS COURT. THOSE INCLUDED HOLMES V. SOUTH CAROLINA, 547 US 319 (2006), WHERE IT WAS HELD THAT A CRIMINAL DEFENDANT HAS A RIGHT TO A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE VIA THE CONFRONTATION CLAUSE, COMPULSORY PROCESS CLAUSE, AND DUE PROCESS CLAUSE OF THE US CONSTITUTION; MELLENDEZ-DIAZ V. MASS., 557 US 305 (2009); AND BRADY V. MARYLAND, 373 US 83 (1963).

THESE CASES ILLUSTRATE THE FACT THAT THE ARIZONA SUPREME COURT IS OUT OF STEP WITH THIS COURT AND WITH OTHER STATE COURTS OF LAST RESORT AND FEDERAL COURTS IN ITS CONSIDERATION OF THE DECISIONS REGARDING THE CRIMINAL DEFENDANT THE MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE.

B. THE PETITIONER HAS CONSTITUTIONAL RIGHTS TO A MEANINGFUL  
OPPORTUNITY TO PRESENT A COMPLETE DEFENSE THAT INCLUDES  
INSPECTING AND TESTING SOURCE CODES USED AGAINST HIM AT TRIAL

IN HOLMES V. SOUTH CAROLINA, SUPRA, THE COURT STATED THAT:

"WHETHER ROOTED DIRECTLY IN THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OR IN THE CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT, THE CONSTITUTION GUARANTEES CRIMINAL DEFENDANTS A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE." HOLMES, AT 324.

THIS COURT HAS SAID THAT A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE IS ONE OF THE

"MOST BASIC INGREDIENTS OF DUE PROCESS OF LAW."

WASHINGTON V. TEXAS, 388 US 14, 18 (1967).

IN ARIZONA, PROSECUTORS ROUTINELY USE A GAS CHROMATOGRAPH MASS SPECTROMETER (GCMS), TO DETERMINE, INTER ALIA, ALCOHOL LEVELS OF AN INDIVIDUAL'S BLOOD. THEY THEN USE THESE REPORTS AT TRIAL, WHERE A FORENSIC ANALYST TESTIFIES ABOUT FOLLOWING PROTOCOLS OF THEIR AGENCY AND OF SUBMITTING SAMPLES TO THE MACHINE. NEITHER THE ACCURACY OF THE MACHINE ITSELF, NOR THE SOURCE CODES WITHIN, USED TO DETERMINE BLOOD ALCOHOL LEVELS, ARE TESTED, OR EVEN MENTIONED. THE SOURCE CODE IS MERELY ASSUMED TO BE CORRECT, EVEN THOUGH IT HAS NOT BEEN TESTED OR INSPECTED FOR ITS ACCURACY BY THE STATE, WHILE IT IS WIDELY KNOWN THAT SUCH PROGRAMS ARE ERROR PRONE, AND IN CONSTANT NEED OF SYSTEM UPDATES TO CORRECT ITS ERRORS.

THE COURT IN MELENDEZ-DIAZ V. MASSACHUSETTS, SUPRA, CONSIDERED ARGUMENTS ON WHETHER AN ANALYST WHO PREPARED A FORENSIC REPORT MUST TESTIFY SINCE THE REPORT WAS ESSENTIALLY AN AFFIDAVIT PREPARED IN ANTICIPATION OF TRIAL. UNDER CRAWFORD V. WASH., 541 US 36 (2004), FROM WHICH MELENDEZ-DIAZ, AMONG OTHERS, FLOWED, MACHINES WERE SEEN CAPABLE OF PROVIDING TESTIMONIAL EVIDENCE GIVEN THE FITTING ANALOGY TO EX PARTE AFFIDAVITS.

THOUGH MELENDEZ-DIAZ DEALT WITH FORENSIC SCIENTISTS, ITS RATIONALE APPLIES WITH EQUAL FORCE TO COMPUTER SCIENTISTS. MUCH LIKE FORENSIC EVIDENCE, EVIDENCE PRODUCED BY A COMPUTER, "[I]T IS NOT UNIQUELY IMMUNE FROM THE RISK OF MANIPULATION." MELENDEZ-DIAZ, AT 318-20.

A FORENSIC REPORT FROM A GAS CHROMATOGRAPH MASS SPECTROMETER, AFTER ALL, IS THE OUTPUT OF A COMPUTER PROGRAM THAT WAS CREATED BY A HUMAN.<sup>1</sup> AT A MINIMUM, IT IS A JOINT STATEMENT. SEE, AAL MUHAMMED V. LEE, 202 F. 3d 1227 (9th CIR 2000).

THE COMPUTER ENGINEER WHO WROTE THE SOURCE CODE WHOSE ALGORITHMS RUN THE PROGRAM THAT DETERMINES THE RESULTS OF A TEST IS ACTUALLY THE ACCUSER, AND THE REPORT BY THE MACHINE IS AN AFFIDAVIT, AS THIS COURT RECOGNIZED IN MELENDEZ-DIAZ. TO HAVE A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE WHERE A MACHINE WITH A SOURCE CODE IS INVOLVED, THE COMPUTER ENGINEER WHO WROTE THE CODE MUST TESTIFY ABOUT THE SOURCE CODE AND BOTH THE CODE AND COMPUTER SCIENTIST MUST BE INSPECTED AND TESTED TO "[P]ROBE AND EXPOSE [TESTIMONIAL] INFIRMITIES." DELAWARE V. FENSTERER, 474 US 15, 22 (1985).

1) SOFTWARE FAILURE IS UBIQUITOUS. COMPANIES SPEND UNTHINKABLE AMOUNTS OF MONEY DEVELOPING AND TESTING SOFTWARE, BUT THEY CANNOT PREVENT SOURCE CODE ERRORS. "SHALL SOURCE CODE ERRORS HAVE LED TO BOEING 737 MAXES TO CRASH, KILLING HUNDREDS OF PEOPLE." WALL STREET JOURNAL, 4/15/19 BY ANDY PASOR AND ROBERT WALL; IT HAS COMPROMISED THE SECURITY OF UP TO TWO-THIRDS OF ALL E-COMMERCE WEBSITES FOR YEARS DUE TO THE "HEARTBLEED BUG" THAT WENT UNNOTICED FROM GOOGLE, YAHOO, FACEBOOK, AND AMAZON. NICOLE PERLOTTI, "EXPERTS FIND A DOOR AJAR IN AN INTERNET SECURITY METHOD THOUGHT SAFE." NEW YORK TIMES, 4/8/14; "ERRORS HAVE ALSO HAPPENED IN FORENSIC SOFTWARE, FROM PROBABILISTIC GENOTYPING SYSTEMS TO BREATHALYZERS," NEW YORK TIMES, "DNA TECHNIQUES BECAME TAINED," 9/4/17; "MISCODE AFFECTS DNA EVIDENCE," THE COURIER-MAIL, 3/20/15.

AFTER ALL, THIS COURT HAS HELD THAT THE CONFRONTATION CLAUSE'S ULTIMATE GOAL IS TO ENSURE RELIABILITY OF EVIDENCE BY SUBJECTING IT TO RIGOROUS TESTING. MARYLAND V. CRAIG, 497 US 836, 845 (1990).

BECAUSE THE ARIZONA SUPREME COURT'S DECISION HAS TRUNCATED THIS COURT'S PRECEDENTS, THIS COURT MUST GRANT CERTIORARI.

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## II. THE ARIZONA SUPREME COURT FAILED TO APPLY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

THE ARIZONA SUPREME COURT, IN DISMISSING / DENYING GUARDADO'S APPLICATION FOR THE WRIT OF MANDAMUS, HAS FAILED TO REQUIRE STATE COURTS TO FOLLOW THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE, AND THEREBY PERMITTED UNAUTHORIZED, UNCONSTITUTIONAL DECISIONS ON MOTIONS TO EXCLUDE EVIDENCE, WHILE ALLOWING CRIMINAL TRIALS ABSENT OF AUTHORITY, JURISDICTION, AND EFFECT.

THIS SEEMINGLY PREPOSTEROUS CONDITION FLOWS FROM A REMOTE AND SPARSELY POPULATED REGION WHERE EXTREME LIBERTIES HAVE BEEN PERMITTED, AND REMAIN EFFECTIVELY RESISTANT TO CHALLENGE BECAUSE OF ALLOWANCES HISTORICALLY MADE IN ACCOMMODATION OF ARRANGEMENTS FOR LOCAL FORUMS TO OPERATE OUTSIDE OF THE ESTABLISHED NORMS OF THE STATE CONSTITUTION, STATUTES, AND RULES OF COURT.

ADDITIONALLY, THIS AREA IN NORTHWESTERNMOST CORNER OF THE STATE IN MOHAVE COUNTY, IS ON, OR BOUNDED BY INDIAN LANDS UNDER THE EXCLUSIVE JURISDICTION OF FEDERAL LAW, ALLOWING ONLY FOR TRIBAL ENFORCEMENT FOR ITS NATIVE PEOPLE; BUT IS ONLY OFFERED AS ANOTHER POTENTIAL GROUND UPON WHICH SUCH LICENSE EXISTS.

THE PROPER LAWFUL BASIS FOR ARIZONA CRIMINAL COURTS IS INCLUDED IN APPENDIX; AND IS AUGMENTED BY THE OPEN PUBLIC AND SELF-IDENTIFICATION AS A COMMISSIONER FOR THE INDIVIDUAL WHO PRESIDED OVER THE ENTIRE TRIAL COURT PROCEEDINGS; ALONG WITH A MAP OF THE SUBJECT AREA, SHOWING IT AT THE COMMON POINT WHICH JOINS THE STATES OF ARIZONA, NEVADA, AND CALIFORNIA, AND THEIR COMMON DOMAIN SHARED WITH THE FORT MOHAVE INDIAN TRIBE.

- A. AS A COURT COMMISSIONER IS NOT AUTHORIZED UNDER THE STATUTES OR THE PROFESSIONAL STANDARDS OF THE BENCH TO DETERMINE THE ADMISSIBILITY OF EVIDENCE IN A CRIMINAL TRIAL, ANY DISPOSITION SO ENTERED IS VOID AB INITIO IN ANY SUCH PROCEEDING IN ARIZONA.

AS A MATTER OF FEDERAL CONSTITUTIONAL LAW, IT HAS LONG BEEN ESTABLISHED THAT FOLLOWING THE 'EXCLUSIONARY RULE' FOR ILLEGALLY OBTAINED EVIDENCE, A STATE COURT MUST EXCLUDE EVIDENCE FROM A CRIMINAL TRIAL OF ANY INDIVIDUAL WHERE FOURTH AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED BY SEARCH AND SEIZURE CONDUCTED CONTRARY TO THOSE CONSTITUTIONAL PROVISIONS. SEE, MAPP V. OHIO, 367 US 643, 654-55 (1961).

LATER, IN STONE V. POWELL, 428 US 465, 481-82 (1976), THE COURT HELD THAT A STATE MUST GIVE A DEFENDANT THE OPPORTUNITY TO RAISE THE EXCLUSIONARY RULE IN A "FULL AND FAIR HEARING" ON THESE FOURTH AND FOURTEENTH AMENDMENT CLAIMS.

WHEN THE COURT STATED "FULL AND FAIR", IT CONTEMPLATES THAT IT INCLUDES ITS DISCIPLINARY CONSEQUENCES WHERE A STATE ATTEMPTS TO AVOID THE CONSTITUTIONAL STANDARDS BY THE MISAPPLICATION OF ITS LAWS AND RULES IN CONTRAVENTION OF THESE REQUIREMENTS.

MOST QUESTIONS CONCERNING A JUDGE'S QUALIFICATION TO HEAR A CASE ARE NOT CONSTITUTIONAL ONES, AS THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT CARRIED TO THE STATES, ESTABLISHES A CONSTITUTIONAL FLOOR, NOT A UNIFORM STANDARD. BUT THE FLOOR ESTABLISHED BY THE DUE PROCESS CLAUSE CLEARLY REQUIRES A "FAIR TRIAL IN A FAIR TRIBUNAL", BEFORE A JUDGE. SEE, TUMELY V. OHIO, 273 US 510, 523 (1927). MOST SUCH QUESTIONS THEN, ARE

"ANSWERED BY COMMON LAW, STATUTE, OR THE PROFESSIONAL STANDARDS OF THE BENCH AND BAR." BRACY V. GRAMLEY, 520 US 899, 904-05 (1997)  
CITING AETNA LIFE INS. V. LAVOIE, 475 US 813, 823 (1986).

IN ARIZONA, THE AUTHORITY OF A COURT COMMISSIONER IS DEFINED THROUGH THE CONSTITUTION AT ART. 6, § 24; IN STATUTE, BY ARS §§ 12-211-213; AND UNDER SUPREME COURT RULE 96(B)(11). THESE RULES GENERALLY EXCLUDE THE PARTICIPATION IN CRIMINAL TRIALS, AND TO THIS ISSUE SPECIFICALLY, FROM DETERMINING THE ADMISSIBILITY OF EVIDENCE. MOREOVER, THE TERM AND APPOINTMENT OF COMMISSIONERS IS EXPLICITLY DEFINED, BUT DOES NOT SEEM TO HAVE BEEN FOLLOWED HERE. SEE, APPENDIX, CURRENT MOHAVE COUNTY EXTRACT.

FROM SOME OF ITS EARLIEST RELEVANT AUTHORITIES, THE COURT HAS CLARIFIED THAT WHEN A COURT ACTS WITHOUT AUTHORITY, ANY ORDERS AND JUDGMENTS ARE VOID AB INITIO. SEE, OLD WAYNE MUTUAL LIFE ASS'N V. McDONOUGH, 204 US 5 (1907); WILLIAMSON V. BERRY, 5 HOW. 345 (1850).

**B. BOTH STATE AND FEDERAL CONSTITUTIONS REQUIRE THAT A JUDGMENT AND SENTENCE BE VACATED IF IMPOSED BY A COURT ACTING WITHOUT AUTHORITY AND ABSENT JURISDICTION**

ARIZONA CONSTITUTION ART. 6, § 24 PROVIDES AUTHORITY FOR SUPERIOR COURT JUDGES TO APPOINT COURT COMMISSIONERS. THE STATUTORY BASIS CARRYING THAT AUTHORITY TO APPOINTMENT IS GIVEN AT ARS § 12-211. HOWEVER, THIS COURT INTENTIONALLY AND UNEQUIVOCALLY DETINGUISHES AND PROHIBITS COURT COMMISSIONERS FROM HEARING AND DETERMINING ANY PROCEEDINGS IN A CRIMINAL TRIAL, INCLUDING SENTENCING. SEE, ARIZ. S. Ct. R. 96(3)(ii). THIS, ANY COMMISSIONER HEARING AND/OR DETERMINING A CRIMINAL TRIAL OR SENTENCING MATTER PROSCRIBED WITHIN ARIZ. S. Ct. R. 96(3)(ii) WOULD BE DOING SO WITHOUT JURISDICTION OR LEGAL AUTHORITY.

IN US V. COTTON, 533 US 625, 632 (2002), THE COURT HELD THAT JURISDICTION CAN NEVER BE WAIVED OR FORFEITED. SEVERAL OPINIONS OF THE COURT HAVE AGREED THAT WHEN A COURT ACTS WITHOUT JURISDICTION, ITS DECISIONS ARE NULL AND VOID AB INITIO. SEE, WILLIAMSON, SUPRA, 12 L. Ed. 1170, 1189 (1850), HOLDING THAT COURTS ARE CONSTRICTED BY AUTHORITY AND CANNOT GO BEYOND THE POWER DELEGATED TO THEM. IF THEY ACT BEYOND THAT AUTHORITY, AND CERTAINLY IN CONTRAVENTION OF IT, THEIR JUDGMENTS AND ORDERS ARE REGARDED AS NULLITIES; THEY ARE NOT VOIDABLE, BUT SIMPLY VOID, AND THIS EVEN PRIOR TO REVERSAL. NORTHERN FIRE V. MARINE INS. CO., 254 US 345 (1920), VOID JUDGMENTS ARE VOID EVEN BEFORE REVERSAL. SEE, ALSO, OLD WAYNE MUTUAL LIFE V. MCDONOUGH, 204 US 8 (1907) A COURT CANNOT CONFER JURISDICTION WHERE NONE EXISTED AND CANNOT MAKE A VOID PROCEEDING VALID. IT IS CLEAR AND WELL ESTABLISHED LAW THAT A VOID ORDER CAN BE CHALLENGED IN ANY COURT. MAINE V. THIBOUTOT, 100 S. Ct. 2501 (1980), ALSO, JURISDICTION ONCE CHALLENGED CANNOT BE ASSUMED AND MUST BE DECIDED.

THE DUE PROCESS CLAUSES OF BOTH THE STATE AND FEDERAL CONSTITUTIONS PROTECT LIBERTY INTERESTS, WHETHER PERSONAL FREEDOMS, OR IN A STATE FOLLOWING ITS RULES. SEE, CLEMONS V. MISSISSIPPI, 494 US 738, 747 (1990). IN POWER V. ALABAMA, 287 US 43, 57-59 (1932) THE COURT FOUND THAT NOTICE AND HEARING, TOGETHER WITH LEGALLY COMPETENT TRIBUNAL HAVING JURISDICTION OF THE CASE, CONSTITUTE BASIC ELEMENTS OF CONSTITUTIONAL REQUIREMENT OF DUE PROCESS OF LAW.

HERE, WHERE ARIZ. S. Ct. R. 96(3)(ii) SPECIFICALLY PROSCRIBES A COMMISSIONER FROM HEARING AND DETERMINING TRIAL AND SENTENCING MATTERS, A COMMISSIONER HEARD AND DETERMINED THE APPLICANT'S JUDGMENT AND IMPOSED SENTENCE THEREUPON. THEREFORE, THE DUE PROCESS CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS WERE VIOLATED, IN THE ABSENCE OF JURISDICTION, AND THEREFORE MUST BE FOUND TO BE NULL AND VOID, AND SUCH ORDERS VACATED.

III. THE ARIZONA SUPREME COURT FAILED TO REQUIRE THE STATE TO FOLLOW STATE AND FEDERAL STATUTES FOR COMPASSIONATE RELEASE OF ELDERLY OR MEDICALLY VULNERABLE INMATES DURING A PANDEMIC

THE EXISTENCE OF COVID-19 VIRUS WAS FIRST NOTED IN THE UNITED STATES IN THE STATE OF WASHINGTON, WHERE OVER THE NEXT TWO WEEKS NEARLY ALL OF THE RESIDENTS OF A RETIREMENT HOME PASSED AWAY, LIKELY ARRIVING FROM CHINA, AND INCREASINGLY HELD TO BE THE RESULT OF GAIN OF FUNCTION RESEARCH AT THE WUHAN VIROLOGY LABORATORY, IN LARGE PART FUNDED BY THE RED ARMY AS A BIOWEAPONS FACILITY, IT HAS SINCE SPREAD AROUND THE WORLD SINCE ITS JANUARY 2020 US DEBUT.

OVER 300,000 AMERICANS HAVE SINCE DIED FROM OVER 28 MILLION INFECTED, PROTECTING THE CHARACTERISTICS THAT ITS VICTIMS ARE USUALLY ELDERLY (OVER 65 YEARS OLD); OR, POSSESSED OF ONE OF FIVE CHRONIC CONDITIONS: (1) OBESITY, OF A BMI OVER 40; (2) IMMUNODEFICIENT; (3) CHRONIC LIVER DISEASE; (4) CHRONIC KIDNEY DISEASE (INCLUDING DIABETES); AND (5) CARDIOVASCULAR DISEASE. ON 27 MARCH 2020, CONGRESS PASSED, AND PRESIDENT TRUMP SIGNED THE CARES ACT [CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT], LARGELY AN AMALGAM OF MODIFIED EXISTING STATUTORY COMPONENTS DRAWN FROM 18 USC § 3624(c)(2), 18 USC § 3626 (g)(2), AND 34 USC § 60541(c)(5)(A). WHILE INITIALLY INTENDED FOR USE BY FEDERAL INMATES ACCESSED THRU HABEAS CORPUS ON CONDITIONS OF CONFINEMENT CONTRARY TO AMENDMENT VIII PROTECTIONS, THERE ARE MANY STATE FACILITIES WITH SIGNIFICANT NUMBERS OF THOSE SERVING CONCURRENT FEDERAL/STATE TERMS WHERE THE STATE FACILITY WAS RECOMMENDED BY THE DISTRICT COURT, AND DESIGNATED BY THE US BUREAU OF PRISONS. THERE ARE SEVERAL STATE PROTECTIVE STATUTORY SAFEGUARDS, SUCH AS ARIZ § 31-233 IN ARIZONA WHICH COULD BE USED TO SIMILAR EFFECT.

THE LOCATION OF IMPRISONMENT FOR THIS APPLICANT HAPPENS TO BE AT ONE OF THE MOST NOTABLE COVID HOTSPOTS IN THE COUNTRY, WITHIN SIGHT OF THE YUMA BORDER CROSSING FACILITY AT SAN LUIS. SEE: ARTICLE, APPENDIX, 12/10/20. INDEED, OVER THIS PAST YEAR, IN ADDITION TO THE HUNDREDS OF INFECTIONS SUFFERED, AND DEATHS HELD IN ISOLATION OR QUARANTINE, COMPLEX WARDEN EDWIN JENSEN, AND CHIEF DEPUTY WARDEN E. AYALA HAVE BOTH PASSED AWAY AFTER BATTLING COVID-19, ALONG WITH SOME FORTY-TWO INMATE DEATHS.

THE APPLICANT, BORN 8/17/51, WITH NUMEROUS CHRONIC QUALIFYING CONDITIONS, MOST NOTABLY VASCULAR CIRCULATORY DIFFICULTIES FOLLOWING A CRITICAL HEAVY EQUIPMENT ACCIDENT WHICH NEARLY REQUIRED THE AMPUTATION OF BOTH LEGS AND DIABETES OF AN ADVANCED LEVEL, CLEARLY QUALIFY HIM FOR RELIEF UNDER EITHER STATE COMPASSIONATE RELEASE, OR THROUGH FEDERAL APPLICATION OF FEDERAL CARES ACT PROVISIONS THROUGH AMENDMENT XIV. SEE, MARTINEZ-BROOKS, et al., v. EASTER & CARVAJAL, N° CV 20-00069 (MP5) (D CT 3/12/20)

## CONCLUSION

FOR THE FOREGOING REASONS, THE PETITIONER RESPECTFULLY  
REQUESTS THAT THE PETITION FOR A WRIT OF HABEAS CORPUS BE GRANTED.

RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> DAY OF APRIL, 2022.

A handwritten signature in black ink, appearing to read "S. Guardado".

/S/ STEVEN GUARDADO  
PETITIONER PRO SE