No. 22-6472

IN THE

SUPREME COURT OF THE UNITED STATES

VINCENT PAUL MELENDREZ — PETITIONER
(Your Name)

vs.

RONALD HAYNES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Vincent Paul Melendrez
(Your Name)

#373005, Stafford Creek Corr. Ctr.
191 Constantine Way
(Address)

Aberdeen, WA 98520
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1. Where the Trial Court's Ruling Compelling the Election of Rights had required a criminal Defendant to waive his Fifth Amendment Constitutional Rights Not to Testify, is it a Violation of a criminal Defendant's Fifth Amendment Constitutional Rights prohibiting self-incrimination for the Trial Court's Ruling to require the criminal Defendant to admit and testify to the Discipline and Restrictions imposed on the alleged victim and to Testify to the specific behavioral act precipitating the Discipline and Restrictions allegedly imposed in order for the criminal Defendant to Present a Defense to the Prosecution's Case which had already alleged that the Defendant had imposed Discipline and Restrictions during the commission of and to facilitate the commission of the Crimes Charged of Rape of a Child and Incest?

2. Where a Trial Court's Ruling had Compelled the Election of Rights, is it a Violation of a criminal Defendant's Sixth Amendment Constitutional Rights to Present a Defense where the Trial Court's Ruling had prohibited cross-examination and other witnesses from Testifying as to the specific behavioral acts of the alleged victim unless the criminal defendant had first agreed to surrender his Fifth Amendment Constitutional Rights Not to Testify and Prohibiting Self-Incrimination and where the Prosecution's Case had already presented Testimony alleging that the criminal Defendant had imposed Discipline and Restrictions during the commission of and to facilitate the commission of the Crimes Charged and had never let his daughter go out, have friends over, or have any type of relationships?

3. Where the Prosecution had presented substantial Testimony alleging that the criminal Defendant had imposed Discipline and Restrictions during the commission of and to facilitate the commission of the Crimes Charged and had never let his daughter go out, have friends over, or have any type of relationships, is it a Violation of a criminal Defendant's Sixth Amendment Constitutional Rights to Confrontation and to Present a Complete Defense where the Trial Court had Ruled to Deny the Defense the indentity of an unknown male witness involved in a sexual relationship with the alleged victim on or about October 3rd, 2010 (during a Charging Period) and to also Rule to Deny the identity of an unknown male witness involved in a sexual relationship with the alleged victim on or about October 3rd, 2011 (during a separate Charging Period)?

LIST OF PARTIES

[x] 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

- State of Washington v. Vincent Paul Melendrez, Trial Court Case No. 12-1-00809-1 KNT, Superior Court of the State of Washington in and for King County, Judgment and Sentence Entered: May 9, 2014.
- State of Washington v. Vincent Paul Melendrez, Court of Appeals Case No. 72210-7-I, Division One Court of Appeals of the State of Washington. Judgment Entered: December 28, 2015.
- State of Washington v. Vincent Paul Melendrez, Washington Supreme Court No. 92822-3, Supreme Court of the State of Washington. Judgment Entered: June 29, 2016.
- State of Washington v. Vincent Paul Melendrez, Washington Supreme Court No. 94172-6, Supreme Court of the State of Washington. Judgment Entered: June 9, 2017.
- In re Pers. Restraint of Melendrez, Court of Appeals Case No. 79111-7-I, Division One Court of Appeals of the State of Washington. Judgment Entered: March 10, 2020.
- In re Pers. Restraint of Melendrez, Washington Supreme Court No. 98411-5, Supreme Court of the State of Washington. Judgment Entered: June 18, 2020.

RELATED CASES (Cont.)

- In re Pers. Restraint of Melendrez, Court of Appeals Case No. 81479-6-I, Division One Court of Appeals of the State of Washington. Judgment Entered: October 15, 2020.
- In re Pers. Restraint of Melendrez, Washington Supreme Court No. 99246-1, Supreme Court of the State of Washington. Judgment Entered: February 2, 2021.
- State of Washington v. Vincent Paul Melendrez, Washington Supreme Court No. 99177-4, Supreme Court of the State of Washington. Judgment Entered: December 3, 2020.
- Melendrez v. Haynes, Case No. 2:17-cv-00984-RAJ-BAT, U.S. District Court for the Western District of Washington. Judgment Entered: January 20, 2022.
- Melendrez v. Haynes, Case No. 22-35110, United States Court of Appeals for the Ninth Circuit. Judgment Entered: September 29, 2022.

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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

[X] For cases from **federal courts**:

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

[X] reported at 2022 U.S. Dist. LEXIS 10818; 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 C to the petition and is

[X] reported at 2021 U.S. Dist. LEXIS 251329; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 29, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 27, 2022, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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 _____. 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- United States Constitution Amendment V
  No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jepoardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- United States Constitution Amendment VI
  Rights of the Accused
  In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

STATEMENT OF THE CASE

On October 5, 2011, R.M. had made numerous accusations against her Father alleging that she had repeatedly been raped and forced to have sex with her Father for years. In Fact, when making her statement to the Renton Police Department, Detective Keyes had specifically asked, "Have you ever had sex with anyone else?", to which R.M. responded, "no." Dkt. 58-4, Ex. 63.

As a result of these accusations, Mr. Melendrez was charged with three counts, consisting of two counts of rape of a child and one count of incest. To this date, none of the other nine people in the household have ever confirmed R.M.'s allegations against her Father.

Months later, at the Respondent's Interview in DSHS v. Vincent Melendrez on January 23, 2013, R.M. would repeatedly claim she could not remember the name of any of her friends. Specifically, when asked, "So was the boy at Weather Apartments named Rafay?", R.M. responded, "I'm not sure.". Dkt 58-4, Ex. 63, at 92 of 111. See also, Dkt.58-4, Ex. 63, at 94-98 of 111 (where R.M. had twice claimed to not know the name of her girl-friend or guy-friend).

Then, later, at the Defense Interview of R.M. on June 18, 2013, R.M. would provide the following statements:

"JK Was it one guy friend or more than one guy friend involved in that?
RM one guy.
JK And what was the name on the guy friend, friends?
RM I don't want to state any names because I don't want to get anybody in trouble.
JK If nothing was going on, there wouldn't be any trouble to be in.

RM Yeah, I know. But Roxanne is already involved. I don't want to involve other people."
(Excerpt from June 18, 2013 Defense Interview, Dkt. 58-4, Ex. 63, at 100-111).

Although it is clear that there were numerous witnesses the Defense had no access to as a result of the deliberate witholding of names by R.M., the case continued and Melendrez had provided adequate and timely Notice that the general nature of his Defense is Denial/Alibi with respect to all allegations. See Omnibus Hearing dated August 9, 2013 (Dkt. 58-4, Ex. 63, at page 80-81 of 111).

Then, on the first day of Trial (January 6, 2014), the State Amended the Information, adding three additional charges for a total of six. RP 36-37, Dkt. 58-1, Ex. 1. (The Trial Report of Proceedings (RP) is included in the Habeas Corpus Proceedings Record and is referred to by the Habeas Record Docket Number).

As the Trial proceeded, on Motions in Limine regarding Bad Acts Evidence, the Trial Court addressed the Defense Motion to Exclude Bad Acts Evidence as part of the State's Brief and started with the State's Motions. RP 67, Dkt. 58-1, Ex. 1. The Trial Court had then Granted the State's 404(b) Motion to Include Evidence of Household Rules and Discipline, and, in so doing, had Denied Defense Motion to Exclude Bad Acts Evidence (404(b)). RP 110-111, Dkt. 58-1, Ex. 1. When making this Ruling the Trial Court specifically stated that any Prejudice as a result of the State's Evidence could be addressed through cross-examination from the Defense, through other witnesses,

and Evidence contradicting these particular facts and circumstances. RP 110-111, Dkt. 58-1, Ex. 1.

Immediately following this Ruling, the Trial Court addressed the State's Motion in Limine as to whether the Defense has any 404(b) Bad Acts Evidence it has to offer with regard to State Witnesses. To this, the Defense had responded, "At the moment, no." RP 112, Dkt. 58-1, Ex. 1.

The State had then challenged the Defense response and cited to the Defense Brief which notes that R.M. had engaged in multiple acts of behavioral conduct. RP 112-113, Dkt. 58-1, Ex. 1.

When the Trial Court asked whether Defense intends to elicit specific instances or general testimony with regard to whether R.M. had some disciplinary problems, the Defense had responded mostly general and offers some examples of what "could" be offered. RP 114-116, Dkt. 58-1, Ex.1.

As a result, the Trial Court had then Reserved Ruling on any specific instances of behavior related evidence the Defense may offer with regard to R.M. RP 116-117, Dkt. 58-1, Ex. 1.

Then, after there is further discussion involving previous sexual intercourse and sexting, the Trial Court repeated its decision with regard to behavior related evidence and Ruled that once the Direct Testimony of R.M. has been obtained that a recess be taken to give counsel the time to sort through thoughts with regard to cross-examination and address any issues that may have come up as a result of the direct. RP 186,

RP 187, Dkt. 58-1, Ex. 2.

After further argument and discussion by the State, the Defense then repeates its position that it could not predict its approach until it had the evidence from the State's case. RP 193-194, Dkt. 58-1, Ex. 2. The Trial Court would then maintain its Ruling that the Defense, with regard to behavioral issues and those kinds of things, was going to present to the Court those specific instances, once the Direct Testimony of R.M. had been obtained. RP 194, RP 186-187, Dkt. 58-1, Ex. 2.

Next, after the Court had dismissed the potential jurors for the remainder of the day on January 8, 2014, the Court addressed both parties to provide some direction and address the issue of past sexual activity of R.M. RP 226, Dkt. 58-1, Ex. 3. As part of this discussion, Defense Counsel had Offered:

> "As the result of information Mr. Melendrez learned, he took his daughter to a clinic --
> -- to be tested for pregnancy and for sexually transmitted diseases.
> ...
> They did that.
> Subsequently, during these allegations, she claims that, yes, she went there, but once there, she was forced to say that she was being tested for pregnancy because of his actions and for sexually-transmitted diseases for his actions.
> ...
> It does appear at that time she had a sexually-transmitted disease." RP 231-232, Dkt. 58-1, Ex. 3.

The Trial Court would then clarify that the allegation will be that R.M. will testify her Father took her to a clinic to see if she was pregnant and to be treated for a sexually-transmitted disease and she will claim that she was forced to

say that it was because of sex with other individuals. RP 232-233, Dkt. 58-1, Ex. 3.

Trial Counsel would then confirm this would essesntially be the allegation. RP 233, Dkt. 58-1, Ex. 3.

Then, later in the Trial, on January 13, 2014, the Defense made the Court aware of an email it had received that morning from the State which indicated that, "On Friday I spoke to [R.M.] She informed me that she was performing oral sex on a boy October 3rd, 2010." Dkt. 58-4, Ex. 63, at page 102 of 111. The State Prosecutor's Original Email is attached to this Petition as Appendix F.

When Defense Counsel had made the Court aware of this Evidence/Discovery, RP 267 (Dkt. 58-1, Ex. 5), Defense Counsel had specifically stated on the Record, the Email reads:

> "that on Friday, this past Friday, he had spoken to [R.M.], and she informed him that she was performing oral sex on a boy on October 3, 2010." RP 267.

When presenting the October 3, 2010 Evidence to the Court, there was no argument, discussion, or Objection that the Evidence of R.M. performing oral sex on a boy on October 3, 2010 was anything other than truthful and reliable Evidence. In Fact, when making its argument to learn the identity of the unknown male witness involved in the October 3rd, 2010 Evidence and to perform investigation into this Discovery, the Defense had argued:

> "But in virtually every instance in the defense interview when I'm speaking to [R.M.] about her firends, she didn't recall names, including "Do you know a boy named Jose?"

> ""I don't think so." "Do you know a boy named Miguel?" "Do you know a boy named Shaq?" In every instance, if she knew the first name, she either wouldn't relate how she knew them or didn't know last names or contact information. It's a clear -- it was very clear that [R.M.] did not want the defense investigating this case. At this point, now we have something, a last name, if you will, to investigate." RP 272-273 (Dkt. 58-1, Ex. 5, at 16-17 of 113).

As it happened, the Trial Court would consider the Defense's request to learn the identity of the unknown male witness from the October 3rd, 2010 Evidence, but, had ultimately denied the Defense the opportunity to learn the identity of this witness or question R.M. with regard to the October 3rd 2010 Evidence at the Supplemental Defense Interview. RP 442-443, (Dkt. 58-1, Ex. 6, at 73-74 of 77).

As the Trial continued, the State Crime Lab Scientist Testified that DNA Evidence was found on the exterior of R.M.'s genitals and that R.M.'s DNA was found on the fly of Melendrez's boxers. When Testifying as to the nature of this Evidence, the Expert had clarified that in "a closed environment, like a family house" the innocent transfer of DNA from one family member to another was more common that the transfer of DNA in other circumstances. RP 664 (Dkt. 58-1, Ex. 8). And, in support of this Testimony and the Defense Theory that R.M. had used a dirty pair of Mr. Melendrez's underwear to plant the physical Evidence, the Scientist confirmed that there were at least three persons DNA on R.M.'s underwear and that a third test might yield a different result completely. RP 684-686 (Dkt. 58-1, Ex. 8).

Based on all the DNA Evidence, the State Crime Lab Scientist/Expert would conclude that different scenarios in the case are equally plausible and suppositions would have to be made in order to favor one scenario over another. RP 692 (Dkt. 58-1, Ex. 8).

The State would then present its case at Trial and had elicited testimonial Evidence on the Direct Testimony of R.M. that alleged Mr. Melendrez had Restricted R.M.'s movements from the time he began having sex with her, RP 837, and regularly forced R.M. to sleep in his bed at night. RP 840, RP 915 (Dkt. 58-1, Ex. 10).

As part of this Testimony, R.M. would also claim that Mr. Melendrez had sexually assaulted her as punishment when he found out she and her brothers were allowing kids over to the house without permission and sneaking out while he was at work. RP 832-837 (Dkt. 58-1, Ex. 10). When providing this Testimony, R.M. had specifically denied committing any of the behaviors she claims her brothers had committed but that she was punished for. RP 834-35 (Dkt. 58-1, Ex. 10).

R.M. would also Testify that Mr. Melendrez placed Restrictions on her brothers, but, unlike her, the boys were allowed out of the home once their behavior improved. RP 837 (Dkt. 58-1, Ex. 10).

In further Testimony, R.M. alleged that when she had a cell phone at one point prior to October 3, 2011, the only boy she kept talking to, and had specifically used the phone to

talk to, had resulted in Mr. Melendrez being upset and jealous when he discovered that communication, RP 910-911, and that, on October 3, 2011, the boy R.M. was talking to had walked her home, after they had already discussed getting into a relationship, and she was scared because she had oral sex in the bathroom with this boy and for the first time had been with somebody besides her Father, resulting in her Father being hurt and jealous of the Fact that she had did that with a different boy when he discovered the act. RP 918, RP 922, RP 925, RP 1096 (Dkt. 58-1, Ex. 10; Dkt. 58-2, Ex. 11).

Following the Direct Testimony of R.M. at Trial, the Defense complied with the Trial Court's earlier Ruling and Instruction to bring forth any bad Acts Evidence which had come up as result of the Direct Testimony of R.M. RP 1016-1022 (Dkt. 58-2, Ex. 11).

When making its argument and Offer, Defense Counsel had specifically argued that R.M. testified extensively to her own character, that her father had seen messages between her and a boy and took her phone away, that she testified to numerous occasions of boys who came over to the home without the father's permission, that one of the boys apparently had said something to make R.M. believe that he was aware of the allegations, and that Defense Counsel was prepared to follow up with everything asked through other witnesses. RP 1016-17, RP 1022 (Dkt. 58-2, Ex. 11).

After this discussion and arguments, the Trial Court had

made the following Ruling:

> "the only way in which any specific act of misconduct outside of sexual activity of [R.M.] would be relevant in this case would be if the defendant is going to testify that the purpose for which he imposed the discipline was not to keep his -- his daughter as -- as a sexual partner in their home or to enforce his desire to have sex with her, but instead was to deal with disciplinary issues. That's the first step. The second step is the specific acts would only be relevant if they are acts the defendant knew of, because he wouldn't be imposing discipline for those acts unless he knew of them. So they don't become relevant until that testimony is elicited." RP 1045-1046 (Dkt. 58-2, Ex. 11).

In response to this Ruling, the Defense inquired which evidentiary analysis was used in determining the relevance of the sexting evidence and after modifying the Ruling to allow cross-examination of the sexting evidence, the Trial Court repeated its Ruling that with regard to the other Testimony, the Court is not going to allow questions regarding acts outside the acts of a sexual nature and the reason the Court is not going to is because it hasn't become relevant and won't become relevant until the defendant's testimony is that he disciplined her because of certain acts and that these are the acts that he knew of. RP 1055 (Dkt. 58-2, Ex. 11).

In response, the Defense asks that the Record reflect that Defense respectfully disagrees with the Court on this latter Ruling. RP 1057 (Dkt. 58-2, Ex. 11).

As the Trial continued, Defense Counsel did not, in accordance with the Trial Court's Ruling Compelling the Election of Rights, ask questions on the cross-examination of R.M. as to the specific acts of behavior which would have directly

undermined the substantial Testimony from R.M. which had already claimed that from the time the sex allegedly began, her Father had sexually assaulted her as a form of punishment, never let anybody come over, never let her go out, never let her have any type of relationship, and that it was only her brothers' friends who came over.

What Defense Counsel was able to elicit in the cross-examination of R.M., were the numerous examples of Prejudicial Surprise in the form of Testimony from R.M. in which R.M. had confirmed that the testimony she had provided at Trial was either never before heard or contrary to her previous statements, depositions, and interviews. RP 1071-72, RP 1088, RP 1089, RP 1097-1098, RP 1100, RP 1135, RP 1139, RP 1165-73, and RP 1182-83 (Dkt. 58-2, Ex. 11 & Ex. 12). The most notable of these were; (1) the alleged offense of anal sex which R.M. had Testified at Trial occurred as punishment for when she claims Mr. Melendrez found out her and her brothers were allowing kids over to the house without permission and sneaking out while he was at work, RP 835, RP 1071-72 (Dkt. 58-1, Ex. 10; Dkt. 58-2, Ex. 11); and (2) the alleged occurrence of oral sex R.M. had Testified at Trial occurred after Mr. Melendrez got out of the shower on October 5, 2011, RP 1139 (Dkt. 58-2, Ex. 12). (Note: Because the State Crime Lab Scientist had already concluded that different theories are equally plausible and the fact that more than two persons DNA on R.M.'s underwear supports the Defense dirty laundry theory, this alleged act was

offered as an explanation of how R.M.'s DNA ended up on the boxers of Mr. Melendrez and is clear Prejudicial Surprise.)

As the Trial continued, Defense Counsel was also able to elicit Testimony from R.M. in regard to the events of October 3, 2011, in which R.M. had admitted to willfully and deliberately witholding the name of a boy at Defense Interview, and freely admitted in Testimony that the events involving this boy were part of a complex act of perjury in which the story created by R.M. involved another person who does not exist and actions that never took place, which R.M. had perpetuated for two years in statements, depositions, and interviews to at least 5 attorneys, CPS, the School Counselor, and Police investigating the case, none of which had ever bothered to investigate and uncover the lies. RP 1063-1064, RP 1102-1105 (Dkt. 58-2, Ex. 11).

When Defense Counsel had asked for the name of the boy, the State had Objected and the Trial Court had Sustained the State's Objection, thereby Denying the Defense the name of a witness whom R.M. had admitted to having had a relationship with. RP 1102 (Dkt. 58-2, Ex. 11).

R.M. would also concede in Testimony that it was impossible for her Father to force her in to his bed at night because from 2008 to 2011 her Father had worked Nights and was not at home, and had also Testified that the alleged first occurrence of sexual intercourse with her Father could not have occured prior to the Fall of 2008. RP 828, RP 1122-24, RP 1824-25, RP 1827,

(Dkt. 58-2, Ex. 12).

R.M. also Testified that when she met with Police on October 5, 2011, she told them exactly where items of evidence were located in a bag, RP 1148 (Dkt. 58-2, Ex. 12), and, that she got her Father's stuff out that morning, including his clothes, since she was in charge of the laundry. RP 827-30, RP 1160, RP 1824-1827 (Dkt. 58-2, Ex. 12).

R.M. had also claimed, when questioned about her trip to the clinic in 2009, that her Father had given her a Sexually Transmitted Disease. RP 1256, RP 1261 (Dkt. 58-2, Ex. 13).

In Response to this Testimony, particularly the timing of the alleged first occurrence, the State Motioned to Amend the Information and the Defense Objected. RP 1219 (Dkt. 58-2, Ex. 13). Then, when the State proposed expanding the dates in Count One and dropping Count Two, the Defense provisionally agreed to the amendment providing that the Trial Court Grant a Bill of Particulars. RP 1229, RP 1233 (Dkt. 58-2, Ex. 13). All parties noted the importance of instructing the Jury that it must unanimously agree on a specific act in order to find Mr. Melendrez Guilty of the rape and incest charges, RP 1235, and, the Trial Court would Grant the Amended Information but declined to Rule on the Defense Motion for Bill of Particulars. RP 1234-35 (Dkt. 58-2, Ex. 13).

As the Trial continued, the Court had contempled numerous times the relevance of the specific acts of behavior of R.M. RP 1380-82, RP 1483-89, RP 1608-1617, RP 1628-1649, RP 1661,

RP 1894-95 (Dkt. 58-2, Ex. 13; Dkt. 58-3, Ex. 14-17).

The Trial COurt had even acknowledged that there was substantial Testimony from R.M. that her Father never let anybody come over and never let her go out and never let her have any type of relationship with anybody and that it was her brothers' friends that came over, and the Trial Court further acknowledged that evidence that she had people over as friends, that she was out with other people, doind those types of things, is simply contradicting the Testimony on direct of R.M. RP 1618-1619 (Dkt. 58-3, Ex. 15).

The Trial Court would then conclude that the essence of the Testimony from R.M. suggests that these actions were occuring because he was having sex with her and didn't want her to leave and have interaction with other people because that's what was going on, and, so the essence of the defense that, no, it wasn't because the defendant was having sex with her that he wouldn't let her leave and did all these things, it was because Mr. Melendrez had these concerns about her behavior, that comes from Mr. Melendrez and only from Mr. Melendrez. RP 1629 (Dkt. 58-3, Ex. 15).

The Trial Court would never alter its Ruling or Prejudice, and, when Defense Counsel had argued that Guadalupe Melendrez, co-parent in the household, be allowed to Testify as to the behavioral acts of R.M. which were directly observed and responded to by Guadalupe Melendrez, the Trial Court did not permit the introduction of this Evidence. RP 1633-1644,

RP 1661-62, RP 1894-95 (Dkt. 58-3, Ex. 15-17). See also, Appendix G, Second Declaration of Guadalupe Melendrez, Certifying that there are over 100 specific acts of behavior directly observed by Guadalupe Melendrez.

In the end, because the Trial Court had twice Denied the Defense the ability to learn the identity of the unknown male witnesses involved in the October 3rd, 2010 Evidence and the October 3rd, 2011 Evidence, coupled with the Fact that the Trial Court's Ruling Compelling the Election of Rights had required Mr. Melendrez to admit to discipline and Restrictions against his daughter and to knowledge of the specific behavioral act precipitating the alleged discipline in order to Present a Defense to the State's Case, which the Trial Court had itself conceded, alleged that Mr. Melendrez had restricted R.M.'s movements from the time the sex began, sexually assaulted her as a form of punishment, never let her go out, have friends over or have any type of relationship, then, Mr. Melendrez was never able to present the Truth and Evidence which proves that R.M. had gone out on hundreds of occasions, had friends over frequently, had numerous relationships, and that any Restriction she may have received from Mr. Melendrez or Guadalupe Melendrez were not meaningful when R.M. was free to do as she wished when her Father went to work for 10 to 12 hours every night. This is the reason R.M. did not want her friends involved in the case. R.M. knew that her friends would Testify to the Fact that she was not Restricted to the home to be sexually assaulted and the

two unknown male witnesses from the October 3rd 2010 Evidence and the October 3rd 2011 Evidence Denied by the Trial Court would have confirmed that R.M. did, in Fact, have numerous relationships, making it impossible that she could have been Restricted to the home during and to facilitate the commission of the Sexual Assaults alleged in the Crimes Charged. The Fact is that it wasn't until her free life was threatened in late 2010 that R.M. came up with and would later follow through with her plan to Fabricate stories alleging her Father had sexually assaulted her as punishment and Restricted her to the home to be Sexually Assaulted.

Ultimately, however, Mr. Melendrez was found Guilty of all Charges and was Sentenced to a minimum term of 245 Months and a Maximum Term of an Indeterminate Life Sentence.

Mr. Melendrez's only hope for Justice is this Court's Granting of the Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

1. The Rulings by the Trial Court in this Case had Violated Mr. Melendrez's Sixth Amendment Constitutional Rights to Present a Defense and Fifth Amendment Constitutional Right Not to Testify.

In Simmons v. United States, 390 U.S. 377, 394, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968), the United States Supreme Court held that it is intolerable that one Constitutional Right should have to be surrendered in order to assert another.

More directly, to determine whether compelling the election of rights has occurred, as a threshold matter, the United States Supreme Court has required a determination of "whether compelling the election impairs to an appreciable extent any of the policies behind the rights involved." McGautha v. California, 402 U.S. 183, 212-13, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971).

To demonstrate this case meets the relevant legal standard and United States Supreme Court Precedent, the Petitioner offers the following:

i. Mr. Melendrez's Sixth Amendment Constitutional Right to Present a Defense was Violated where the Trial Court's Ruling Compelling the Election of Rights did not allow cross-examination of R.M. as to the specific acts of behavior undermining the State's Case.

The introduction of the State's Evidence and case against Mr. Melendrez was the subject of several Motions in Limine.

The Trial Court had Granted the State's 404(b) Motion to Include Evidence of Household Rules and Discipline, and, in so doing, had Denied the Defense Motion to Exclude Bad Acts Evidence (404(b)). Report of Proceedings (RP), at 110-11 (Dkt. 58-1, Ex. 1). When making this Ruling, the Trial Court had specifically stated that any Prejudice could be addressed through cross-examination from the Defense, through other witnesses, and Evidence contradicting these particular facts and circumstances. RP 110-11 (Dkt. 58-1, Ex. 1).

Immediately following this Ruling, the Trial Court had addressed the State's Motion in Limine as to whether the Defense has any 404(b) Bad Acts Evidence it had to offer with regard to State Witnesses. The Defense had specifically responded that, "At the moment, no." RP 112 (Dkt. 58-1, Ex. 1).

After further discussions and arguments, the Trial Court had ultimately Reserved Ruling on any specific instances the Defense had to offer until after the Direct Testimony of R.M. had been obtained, and, at no time had Defense waived any of the Defendant's Fifth or Sixth Amendment Constitutional Rights. RP 116-117, RP 186-187, RP 191-194 (Dkt 58-1, Ex. 1-2).

As the Trial continued, the State would then present its Case and Evidence from R.M. alleging that Mr. Melendrez, father of R.M., had restricted R.M.'s movements from the time he began having sex with her, RP 837, and regularly forced R.M. to sleep in his bed at night. RP 840, RP 915 (Dkt. 58-1, Ex. 10).

As part of this Testimony, R.M. would also claim that

Melendrez had sexually assaulted her as punishment when he found out she and her brothers were allowing kids over to the house without permission and sneaking out while he was at work. RP 832-837 (Dkt. 58-1, Ex. 10). When providing this Testimony, R.M. had specifically denied committing any of the behaviors she claimed her brothers had committed but that she was punished for. RP 834-835 (Dkt. 58-1, Ex. 10).

R.M. would also Testify that Melendrez placed restrictions on the boys, but, unlike her, the boys were allowed out of the home once their behavior improved. RP 837 (Dkt. 58-1, Ex. 10).

In further testimony, R.M. alleged that when she had a cell phone at one point prior to October 3, 2011, the only boy she kept talking to, and had specifically used the phone to talk to, had resulted in Mr. Melendrez being upset and jealous when he discovered that communication, RP 910-911, and that on October 3, 2011, the boy R.M. was talking to had walked her home, after they had already discussed getting into a relationship, and she was scared because she had oral sex in the bathroom with this boy and for the first time had been with somebody besides her Father, resulting in her Father being hurt and jealous of the Fact that she had did that with a different boy when he discovered the act. RP 918, RP 922, RP 925 (Dkt. 58-1, Ex. 10).

Following the Direct Examination of R.M. at Trial, the Defense complied with the Trial Court's earlier Ruling and Instruction to bring forth any bad Acts Behavior Evidence which

had come up as a result of the Direct Testimony of R.M., and, had specified it was prepared to follow up with everything asked through other witnesses. RP 1016-1022 (Dkt. 58-2, Ex. 11).

The Trial Court, however, would make a Ruling compelling the Election of Rights when it decided:

> "the only way in which any specific act of misconduct outside of sexual activity of [R.M.] would be relevant in this case would be if the defendant is going to testify that the purpose for which he imposed the discipline was not to keep his -- his daughter as -- as a sexual partner in their home or to enforce his desire to have sex with her, but instead was to deal with disciplinary issues. That's the first step. The second step is the specific acts would only be relevant if they are acts the defendant knew of, because he wouldn't be imposing discipline for those acts unless he knew of them. So they don't become relevant until that testimony is elicited." RP 1045-1046 (Dkt. 58-2, Ex. 11).

In Response to this Ruling, the Defense inquired which evidentiary analysis was used in determining the relevance of the sexting evidence and after modifying its Ruling to allow cross-examination of the sexting evidence, the Trial Court repeated its Ruling that with regard to the other Testimony, the Court is not going to allow questions regarding acts outside of the acts of a sexual nature and the reason the Court is not going to is because it hasn't become relevant and won't become relevant until the defendant's testimony is that he disciplined her because of certain acts and that these are the acts that he knew of. RP 1055 (Dkt. 58-2, Ex. 11).

In Response, the Defense asks that the Record reflect that Defense respectfully disagrees with the Court on this latter Ruling. RP 1057 (Dkt. 58-2, Ex. 11).

As the Trial continued, Defense Counsel did not, in accordance with the Trial Court's Ruling, ask questions on the cross-examination of R.M. regarding specific acts of behavior even though it was the State not Defense which had introduced Evidence claiming and alleging that Melendrez had restricted R.M. to the home in order to sexually assault her and had sexually assaulted her as punishment for behaviors she had specifically Testified to having never committed.

The United States Supreme Court has established that, "In order for the jury to decide "where the truth lies" a defendant must be given the opportunity to present his version of the facts." Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967).

In this Case, it is clear from the Trial Court's Ruling that the Court believed that Melendrez had restricted R.M. to the home in order to sexually assault her and enforce his desire to have sex with his daughter.

To overcome such Prejudice and prove the allegations False, it was critical for Mr. Melendrez to elicit questions on the cross-examination of R.M. regarding the hundreds of specific acts of behavior committed by R.M. which would have proved that R.M. had, in Fact, had friends over to the home, had gone out, and had relationships and was not, therefore, Restricted to the home to be sexually assaulted.

The Trial Court had even acknowledged, later in the Trial, that there was substantial Testimony from R.M. that her Father

never let anybody come over and never let her go out and never let her have any type of relationship with anybody and that it was her brothers' friends that came over, and, the Trial Court had further acknowledged that, evidence that she had people over as friends, that she was out with other people, doing those types of things, is simply contradicting the Testimony on Direct of R.M. RP 1618-1619 (Dkt. 58-3, Ex. 15).

Here, the Violation of Mr. Melendrez's Sixth Amendment Constitutional Rights to Present a Defense are clear where the Trial Court's Ruling Compelling the Election of Rights had prohibited hundreds of specific questions on the cross-examination of R.M. which would have proved that the allegations presented by the State claiming that Mr. Melendrez had Restricted R.M. to the home in order to Sexually Assault her is a Fabrication.

ii. Mr. Melendrez's Sixth Amendment Constitutional Rights to Present a Defense were Violated where the Trial Court's Ruling Compelling the Election of Rights did not allow Defense Witness testimony as to the specific acts of R.M. which would have undermined the State's Case.

After the Trial Court's Ruling Compelling the Election of Rights (RP 1045-1057), the Trial continued and the Trial Court would contemplate, numerous times, the relevance of the specific acts of behavior of R.M. RP 1380-1382, RP 1483-89, RP 1608-17, RP 1628-49, RP 1661, RP 1894-95 (Dkt. 58-2, Ex. 13;

Dkt. 58-3, Ex. 14-17).

As part of these discussions, the Trial Court would conclude that the essence of the Testimony from R.M. suggests that these actions were occurring because he was having sex with her and didn't want her to leave and have interactions with other people because that's what was going on, and, so the essence of the Defense that, no, it wasn't because the defendant was having sex with her that he wouldn't let her leave and did all those things, it was because Mr. Melendrez had concerns about her behavior, that comes from Mr. Melendrez and only from Mr. Melendrez. RP 1629 (Dkt. 58-3, Ex. 15).

Here, the assumption by the Trial Court that Melendrez had Restricted R.M., "wouldn't let her leave and did all those things", as the essence of the Defense is an egregious Error.

The Defense presented by Mr. Melendrez at Trial was Fabrication and Alibi, neither of which are Affirmitive Defenses.

Over and over Mr. Melendrez had attempted to present evidence proving that R.M. was not Restricted to the home, had friends over, had gone out, and had relationships, and, was not therefore, Restricted to the home in order to be Sexually Assaulted.

But the Trial Court would never alter its Ruling or prejudice, and, when Defense Counsel had argued that Guadalupe Melendrez, co-parent in the household, be allowed to Testify as to the behavioral acts of R.M. which were directly observed

by and responded to by Guadalupe Melendrez, the Trial Court did not permit the introduction of this Evidence. RP 1623-1644, RP 1661-62, RP 1894-95 (Dkt. 58-3, Ex. 15-17).

The Second Declaration of Guadalupe Melendrez is attached as Appendix G and specifies that there are over 100 specific behavioral acts of R.M. witnessed by Guadalupe Melendrez.

Thus, there is an additional Violation of Mr. Melendrez's Sixth Amendment Constitutional Rights to Present a Defense where the Trial Court's Ruling Compelling the Election of Rights had prohibited the introduction of Evidence of over 100 specific behavioral acts of R.M. which would have proved that the allegations presented by the State claiming that the Defendant had Restricted R.M. to the home in order to Sexually Assault her is a Fabrication.

iii. Mr. Melendrez's Fifth Amendment Constitutional Right Not to Testify and Privilege against Self-Incrimination was Violated by the Trial Court's Ruling Compelling the Election of Rights.

In Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964), the United States Supreme Court held that under the due process clause of the United States Constitutions' Fourteenth Amendment, the Fifth Amendment privilege is binding on the States as well as the Federal Government.

Further, the highest Court has held that the Fifth Amendment to the Constitution is intended to secure a citizen from compulsory testimony against himself by protecting him

from extended concessions or examinations in court proceedings by compulsory methods. Burdeau v. McDowell, 256 U.S. 465, 41 S.Ct. 574, 655 L.Ed. 1048, 13 ALR 1159 (1921).

In addition, the United States Supreme Court has upheld this Constitutional Right by holding that the privilege against self-incrimination protects accused from being compelled to incriminate himself in any manner, and does not distinguish degrees of incrimination. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

In this case, the Trial Court's Ruling (RP 1045-1057) Compelling the Election of Rights had specifically Required Melendrez to Testify and admit that he had imposed Discipline and Restrictions on his daughter R.M. for specific acts of her behavior that he had knowledge of, in order to present any Defense and Evidence of the specific acts of behavior of R.M. which would have proved that R.M. had, in Fact, had friends over, had gone out, and had relationships, and, which was contrary to the State's Case which had already presented Testimonial Evidence that Mr. Melendrez had sexually assaulted R.M. as a form of punishment and Restricted R.M. to the home in order to Sexually Assault her.

By requiring Mr. Melendrez to admit to some form of Discipline against R.M. and to knowledge of a specific act of R.M. precipitating the alleged Discipline, Mr. Melendrez was left in the impossible position of feeding the State's Fabrication and admitting to acts of Discipline he did not

commit or having to repeatedly attempt to introduce Evidence contrary to the State's case which had already claimed Mr. Melendrez had sexually assaulted R.M. as a form of punishment (discipline) and had Restricted her to the home in order to sexually assault her, only to be ultimately denied by the Trial Court's repeated Rulings Compelling the Election of Rights. Thus, by Compelling the Election of Rights in its Rulings, the Trial Court had invoked a Compulsory Method in Violation of Mr. Melendrez's Fifth Amendment Constitutional Rights.

Since Melendrez did not waive his Fifth Amendment Rights prior to or at the time of the Trial Court's Ruling Compelling the Election of Rights (RP 1045-1057), and, because the Defense at Trial was Fabrication and Alibi, neither of which are Affirmitive Defenses, then, Mr. Melendrez's Testimony was not necessary to meet any threshold requirement of admitting to Disciplinary acts against R.M. in order to Present a Defense to the State's Case which had already presented Testimonial Evidence to the Jury alleging that Mr. Melendrez had Sexually Assaulted R.M. as a form of punishment and had Restricted R.M. to the home in order to Sexually Assault her.

As repeatedly argued, at the time of the Trial Court's Ruling Compelling the Election of Rights (RP 1045-1057), the Trial Court had already assumed that Mr. Melendrez had Restricted R.M. to the home and imposed other forms of discipline on R.M. in order to Sexually Assault her.

Thus, by compelling Mr. Melendrez to admit that he had Restricted his daughter to the home and to admit he "did those other things", the Trial Court's Rulings Compelling the Election of Rights had Violated Mr. Melendrez's Fifth Amendment Constitutional Rights as defined by this Court in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and, this case, therefore, meets the threshold impairment of Rights for application of the Standard in Simmons v. United States and the Convictions in this Case must be Vacated.

iv. The Petitioner has made a substantial showing of the Violations of his Constitutional Rights and other Defendant's may be forced to admit to Fabricated Evidence in order to Present a Defense.

In this Case, the Trial Court's Ruling Compelling the Election of Rights had required Mr. Melendrez to admit and Testify he had imposed Discipline and Restrictions to the home against his daughter and to Testify as to the specific act which had precipitated the alleged Discipline in order to present a Defense to the State's Case which had already presented that Mr. Melendrez had Restricted R.M. to the home from the time she sex allegedly began, had sexually assaulted her as punishment, had never let her go out, have friends over, or have any type of relationship.

As is obvious, this type of Compulsory Method and Ruling had placed Mr. Melendrez in the impossible position of having to falsely admit and Testify to discipline he may not have even

imposed on his daughter in order to present the specific acts of behavior of R.M. which would have proved R.M.'s Testimony claiming that she was sexually assaulted as punishment and Restricted to the home to be Seuxually Assaulted are complete Fabrications.

For example, there were numerous occasions when R.M. had friends over to spend the night while her Father was at work, and, since this behavior, by itself, is not misbehavior, then there would not have been any discipline or Restrictions. The Evidence of these behavioral acts would, however, undermine the Testimony of R.M. that she never had friends over and was Restricted to the home during the commission of and to facilitate the commissions of the Crimes Charged. Had such critical Evidence been allowed to be presented, the Defense could have also sought the names of these friends on the cross-examination of R.M. and the Jury would have then heard that R.M. does not want to provide then names of her friends since it will expose her lies and Fabrications.

When this Issue was Raised in the Federal Habeas Petition, the Magistrate Judge, in its Report and Recommendation (Appendix C) concluded, "The Court also notes that the record reflects that the evidentiary ruling appears to have been based on legitimate evidentiary concerns. The trial court found that the evidence of R.M.'s alleged misbehavior was not admissible under ER 404(b) as an attack on her character but would be relevant and admissible if offered to explain the basis for

Petitioner's decisions to discipline R.M. Accordingly, before other witnesses could testify to R.M.'s acts of alleged misconduct, the trial court reasonably concluded the defense would need to establish the foundation for Petitioner's personal knowledge of the alleged behavior." Dkt. 68, Id. at 19; Appendix C, at 19.

Here, like the Trial Court, the U.S. District Court's Magistrate Judge assumes that Mr. Melendrez had disciplined and imposed Restrictions against R.M., his daughter, and further assumes it is reasonable, therefore, to force Mr. Melendrez to Testify to personal knowledge of the alleged act of R.M.'s behavior precipitating such discipline before other witnesses could Testify to the Fact of the behavior itself. This is both unreasonable and not the Truth.

Because it was the State which had introduced the Evidence of Discipline and Restrictions allegedly committed by Mr. Melendrez against R.M. during the commission of and to facilitate the commission of the alleged Crimes Charged, then, Mr. Melendrez was under no burden to meet any threshold requirement compelling him to Testify to acts of Discipline and Restrictions against his daughter in order to Present a Defense to the State's Case which had, as the Trial Court conceded, presented substantial Testimony that Mr. Melendrez sexually assaulted her as punishment, never let her go out, have friends over, or have any type of relationships, and had Restricted R.M. to the home from the time the sex allegedly began.

If criminal defendant's are forced to admit and Testify to alleged acts supporting the Prosecution's Case, particularly those acts the Prosecution alleged in its Case to have occured during and to facilitate the commission of the alleged crimes charged, all in order to Present a Defense to such allegations, then, no criminal defendant can ever receive a fair trial and the Fifth Amendment no longer offers protection from forcing Defendant's to incriminate themselves.

Here, once the Prosecution had presented Testimony alleging Mr. Melendrez had sexually assaulted R.M. as punishment and had Restricted R.M. to the home from the time the sex allegedly began, never letting her go out, have friends over, or have any type of relationships, then, Mr. Melendrez should have been able to present any and all specific acts proving that R.M. did have friends over, had gone out, and had relationships, regardless if any of those acts resulted in discipline from Mr. Melendrez or Guadalupe Melendrez, because, the Fact of the act itself proves the Testimony alleging Mr. Melendrez had disciplined and Restricted R.M. to the home during and to facilitate repeated sexual assaults is a Fabrication.

The Truth is that R.M. was free to do as she pleased while her Father was at work at night and when, years later, that freedom was threatened, R.M. had formulated and executed a plan in October 2011 by having Fabricated several stories alleging her Father had sexually assaulted her as punishment and Restricted her to the home in order to facilitate repeated

sexual assaults. Since R.M. will never come forward with her friends names because it will expose her lies and Fabrications, Mr. Melendrez's only hope for Justice is for the Court to Grant a Writ of Certiorari.

2. The Trial Court's Ruling Denying Mr. Melendrez the Identity of the Unknown Male Witnesses Resulted in Denials of his Sixth Amendment Constitutional Rights to Confrontation and to Present a Defense.

At Trial, on January 13, 2014, Defense Counsel had made the Court aware of an email it had received from the Prosecutor that morning and had stated on the Record that the Prosecutor indicated:

> "that on Friday, this past Friday, he had spoken to [R.M.], and she informed him that she was performing oral sex on a boy on October 3, 2010." RP 267 (Dkt. 58-1, Ex. 5).

The Email containing this Evidence and Discovery is attached as Appendix F and specifically states: "On Friday I spoke to [R.M.] She informed me that she was performing oral sex on a boy October 3rd, 2010." Dkt. 58-4, Ex. 63, at 102; Appendix F, Id.

In making its argument to learn the identity of this unknown male witness and to perform investigation into this Discovery, the Defense had argued:

> "But in virtually every instance in the defense interview when I'm speaking to [R.M.] about her friends, she didn't recall names, including "Do you know a boy named Jose?" "I don't think so." "Do you know a boy named Miguel?" "Do you know a boy named Shaq?"
> In every instance, if she knew the first name, she either wouldn't relate how she knew them or didn't know last

> names or contact information. It's a clear -- it was very clear that [R.M.] did not want the defense investigating this case." RP 272-73 (Dkt. 58-1, Ex. 5, at 16-17).

In support of Defense Counsel's arguments to the Trial Court, the Record does in Fact reflect that R.M. had stated at Defense Interview: "I don't want to state any names because I don't want to get anybody in trouble." Dkt. 58-4, Ex. 63, at 100.

When the October 3rd, 2010 Evidence was presented to the Trial Court, there was no argument, discussion, or Objection that the Evidence of R.M. performing oral sex on a boy on October 3rd, 2010 was anything other than truthful and reliable Evidence.

Further, when the Defense had made its argument that R.M. did not want the Defense Investigating the Case due to the repeated witholding of Information at Defense Interview by R.M. regarding her "Friends", the State Prosecutor did not dispute this Fact in any way.

As it happened, the Trial Court would consider the Defense request to learn the identity of the unknown male witness from the October 3rd 2010 Evidence, but, had ultimately Denied the Defense the opportunity to learn the identity of the unknown male witness or question R.M. with regard to this Evidence at the Supplemental Defense Interview. RP 442-443 (Dkt. 58-1, Ex. 6, at 73-74).

The, in the Direct Testimony of R.M., R.M. alleged that when she had a cell phone at one point prior to October 3, 2011

the only boy she kept talking to, and had specifically used the phone to talk to, had resulted in Mr. Melendrez being upset and jealous when he discovered that communication, RP 910-911, and that, on October 3, 2011, the boy she kept talking to had walked her home, after they had already discussed getting into a relationship, and she was scared because she had oral sex in the bathroom with this boy and for the first time had been with somebody besides her Father, resulting in her Father being hurt and jealous when he discovered the fact that she had did that with a different boy. RP 918, RP 922, RP 925, RP 1096 (Dkt. 58-1, Ex. 10; Dkt. 58-2, Ex. 11).

After this highly Prejudicial Testimony was elicited, there was no mention of or argument to present the October 3, 2010 Evidence by either party.

Then, later in the Trial, on the corss-examination of R.M. the Defense had elivited Testimony with regard to the facts of the October 3rd, 2011 Testimony R.M. had provided on Direct. RP 1063-64, RP 1102-1105 (Dkt. 58-2, Ex. 11).

As part of this Testimony, R.M. freely admitted to having created a complex act of perjury regarding the events of October 3, 2011 including characters who do not exist and events that never took place and having perpetuated this lie at all points prior to Trial to Police, CPS, the School Counselor, and at least 5 Attorneys, none of which ever exposed the Fabrication or sought to Discover the unknown male witness. RP 1063-64, RP 1102-1105 (Dkt. 58-2, Ex. 11).

When Defense Counsel had asked for the name of the boy involved in the October 3, 2011 Evidence, the State Objected and the Trial Court had Sustained the Objection. RP 1102 (Dkt. 58-2, Ex. 11).

The United States Supreme Court has established Precedent which makes clear that the Confrontation Clause protects the Right to engage in cross-examination that "might reasonably" lead a jury to "question[] the witness's reliability or credibility." Deleware v. Van Arsdall, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

Further, the Constitutional Right to Present a Complete Defense includes the right to present evidence, including the testimony of witnesses. Washington v. Texas, 388 U.S. 14, 18-19, 23, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967).

Here, the Facts of the Case show that there is very clear October 3rd, 2010 Evidence proving R.M.'s Testimony that she was scared when she had oral sex in a bathroom on October 3, 2011 and for the first time had been with somebody besides her Father is Pure Perjury.

The Trial Court's Ruling Denying the identity of the October 3, 2010 Unknown Male Witness (RP 442-443), is, a Violation of Mr. Melendrez's Constitutional Rights under the Sixth Amendment to Present a Defense and Confrontation.

Had the Jury heard from the October 3, 2010 Witness, then there would be substantial Evidence proving that R.M. did, in Fact, have a relationship and had gone out with this boy and,

based on the number of specific occasions this boy and R.M. were together, there would also be significant Evidence proving that the State's allegations claiming that Mr. Melendrez had Disciplined and Restricted R.M. to the home during and to facilitate the commission of the Rape and Incest Crimes Charged in this Case are Fabrications. The Jury would have certainly received a completely different impression of the credibility of the State's Case and Key Witness, and, to this date the identity of the October 3rd 2010 Unknown Male Witness has not been revealed.

Further, when, later in the Trial, the Trial Court had also Ruled that the Defense could not know the name of the unknown male witness in the October 3rd, 2011 Evidence, then, there was an additional Violation of Mr. Melendrez's Sixth Amendment Constitutional Rights to Confrontation and to Present a Complete Defense.

There is no doubt that the October 3, 2011 Witness would have provided Testimony proving that R.M. did, in Fact, have a relationship and had gone out with this boy, and, when coupled with the witness Denied Mr. Melendrez from the October 3rd, 2010 Evidence, there is absolute proof that the Jury would have received a completely different impression of the credibility of the State's Case and Key Witness, and, thus, the Convictions in this Case must be Vacated and the Petition for Writ of Certiorari must be Granted as is required by United States Supreme Court Precedent when a there are multiple Violations

of a criminal Defendant's Sixth Amendment Constitutional Rights to Confrontation and to Present a Complete Defense.

i. The Petitioner has made a substantial showing of the Violations of his Constitutional Rights and other criminal Defendant's will suffer from the District Court's Materially False Statements used as a basis for Rejection of a Habeas Petitioner's Constitutional Claims.

When this Issue was Raised in the Federal Habeas Patition, the Petitioner had claimed separate acts of sexual conduct of R.M. and that the Denial of the ability to investigate those separate acts and witnesses by the Trial Court had resulted in both the Violation of the Sixth Amendment Constitutional Rights to Present a Defense and Rights to Confrontation. Dkt. 18-1, Id. at 11; Dkt. 18, Id. at 28-29.

Despite the Facts of the Case, however, the District Court Magistrate Judge would conclude that the:

> "record reflects that prior to trial the prosecution revealed to defense counsel and the court that R.M. had admitted to engaging in oral sex with a boy in a public restroom at the apartment complex on October 3, despite having denied this previously." Dkt. 68, Id. at 40; Appendix C, Id. at 40.

What's worse, although the Magistrate Judge notes that the Record reflects that Defense initially represented to the Trial Court that the incident occurred on October 3. 2010, the District Magistrate Judge would then conclude:

> "However, the remainder of the record appears to reflect that this reference to 2010 was erroneaous. The remainder of the discussion and testimony at trial regarding this incident makes clear if occurred October 3, 2011 not October 3, 2010." Appendix C, Id. at 41; Dkt. 68, Id.

Here, as proven on the face of the Evidence, the October 3rd, 2010 Evidence is not a mere reference but a Fact and it is Materially False to contend the date of the Evidence is anything other than October 3rd, 2010. Appendix F, Id.

Further, as proven herein, when making the October 3, 2010 Evidence known to the Court, neither the Defense, or any other party, had claimed or contended the October 3rd, 2010 Evidence had occurred in a public restroom at an apartment complex, nor was there any argument that the date of the October 3rd, 2010 Evidence was incorrect or anything other than October 3rd, 2010.

The Materially False Statements committed by the District Court, without having conducted any of the requested Hearings, deprived Mr. Melendrez of a fair and meaningful review of his Constitutional Claims where these False Statements were used as the basis for rejecting Mr. Melendrez's Federal Habeas Claims.

For its part, the Ninth Circuit Court of Appeals had Rejected Mr. Melendrez's Motion and Application for Certificate of Appealability without any Reasoned Decision or Answer to these egregious acts and without answer to any of Mr. Melendrez' Constitutional Claims herein. Appendix A, Order Denying COA; Appendix B, Order Denying Motion for Reconsideration.

Mr. Melendrez had also raised claims of Ineffective Assistance of Counsel where Trial Counsel had failed to bring forth Evidence proving that Mr. Melendrez never had a Sexually Transmitted Disease and Failed to bring forth the witness in the October 3, 2010 Evidence, but, these claims were rejected

by the District Court using the same Materially False Statements used to reject Mr. Melendrez's Confrontation Clause Claims.

This Petitioner has served this country Honorably and swore an oath to support and defend the Constitution, and, if this Court allows the District Court and Ninth Circuit Court of Appeals to commit and perpetuate Materially False Statements as the basis for rejecting valid Constitutional Claims, then, there can be no Due Process of Law and others will suffer from a Judicial Branch which is not capable of upholding its Duty.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vincent Paul Melendrez

Date: December 27, 2022