

23-6108

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

FILED

NOV 27 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

BRYAN SCOTT CAVETT — PETITIONER PRO-SE
(Your Name)

vs.

BOBBY LUMPKIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Fifth Circuit, 600 S. Main St., 115 New Orleans
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) L.A. 70130

PETITION FOR WRIT OF CERTIORARI

BRYAN SCOTT CAVETT, Cott.eld Unit
(Your Name)

2661 FM 2054,
(Address)

Tennessee Colony, Tx. 75884
(City, State, Zip Code)

Incarcerated/Not Allowed
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether or Not State violates an accused person's Due Process Rights when Texas High Court denies his State 11.07 Habeas Corpus, without written order, on "Findings of Trial Court", where the trial Court did not even docket, or hold a hearing to find No Findings of facts, yet deferred to Seventh Court of Appeals of Texas, in Amarillo, who in return committed that their "Court Jurisdiction or Plea Power has run out. Thereby having No Actual Subject Matter Jurisdiction?
- 2) Whether or Not Petitioners, Sixth Amendment right to have witnesses, and to present a defense, which is protected by both the, Six Amendment right to "Compulsory Process and Due Process Clause of the Fourteenth Amendment were violated by the prosecutor misconduct, by threatening Defense witnesses, after admonishment by trial Court judge with jail time, probation violation, revocation and future Indictment by a Grand Jury if Witnesses Preceded to want to willingly testify in and on Defense's behalf?
- 3) Whether or Not, trial appointed Counsel was ineffective assistance, a Sixth Amendment Right violation for failure to Object to prosecutors misconduct of threatening the witnesses he actually subpoenaed himself for Defense witnesses in Trial Court, Cause No. 6132?
- 4) Are an Accused Constitutional Right to testify or Not, Per trial Counsels decision, and accused Constitutional Right to "Effective Assistance of Counsel" violated when, Counsel purposely deceives his Client thru Misrepresentation of the law, and withholds evidence from his client (ie, "CPS" Child protective Service reports reference Number, 66354895), even pertinent to an "Intellegent Strategic Decision on whether or not to testify, notwithstanding his clients admonishment of his rights?
- 5) Are on wrongly accused Constitutional Right to have "Effective Assistance of Counsel" violated when he fails to make an adequate investigation into the case, and makes bad decisions, "Not to hire Experts to rebutt the States Expert witnesses, when Counsel is not well versed in the "Technical Subject Matter", then instead relies solely upon the States limited, tainted investigation?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

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

RELATED CASES

CAVETT v. State, Tr. Ct. No. 6132, 452nd Judicial District Court of McCulloch County Tx. March 7, 2017 Sentenced 20 years imprisonment, an \$10,000 fine by Jury

Cavett v. State, No. 07-17-0041-CR, 2018 WL 5075101 (Tex. App. - Amarillo, Oct. 17, 2018, No Pet) Seventh Court of Appeals of Texas.

Cavett v. State, Ex Parte Cavett, No. WR-44,795-3, In the Texas Court of Criminal Appeals, denied without written order, July 7, 2021

Cavett v. State, Ex Parte Cavett, No. WR-44,795-04, Dismissed as Subsequent, November 17, 2021 Texas Court of Criminal Appeals

Cavett v. Lumpkin, Civ. No. A-22-CV-1042-RP, § 2254 writ of Habeas Corpus, In The United States District Court For The Western District of Texas Austin Division, Dismissed with Prejudice as time barred, April 10, 2023

Cavett v. Lumpkin, No. 23-50314, United States Court of Appeals for the Fifth Circuit, Application for "COA" Certificate of Appealability, Un Published ORDER DENIED, July, 20, 2023

Cavett v. State, Cause No. 6132-w-3, 452nd Judicial District of McCulloch County Tx. Filed, July, 10, 2023, Pending, Courts Decision

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	7
PROOF OF SERVICE	8

INDEX TO APPENDICES

APPENDIX A United States District Court for the Western District of Texas
Austin Division, "Dismissed with Prejudice" April 10, 2023

APPENDIX B United States Court of Appeals, for the Fifth Circuit, Cavett's Motion
For a COA is Denied, July, 20, 2023

APPENDIX C Post Conviction Innocence Motion For leave to Produce Documents
Under Precept: de libertatibus allocandis Denied. Never docketed

APPENDIX D Application to ISSUE SUBPOENAS Cause No. 6132

APPENDIX E

APPENDIX F

EXHIBITS

- Exhibit (A) ⁽¹⁾⁽²⁾⁽³⁾ Sapeona for Leandra Escobedo (Escovedo)
- Exhibit (B) Sapeona for Thomas Rodriguez
- Exhibit (C) Trial Transcript Leandra Escobedo & Thomas Rodriguez
- Exhibit (D) Trial Docket
- Exhibit (E) Trial Attorney Time Sheet

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Strickland v. Washington, 466 U.S. 668, 690 (1994)	6, 17, 19
Baker v. Quarterman, 497 F.3d 459, (5 th Cir. 2007)	6,
Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009)	7,
Washington v. Texas 87 S.Ct. 1920, (1967)	9, 18, 19
Keller v. State, 646 S.W.2d 506 (1982)	9
Chambers v. Mississippi, Supra, 410 U.S. 284 (1973)	9
Ray v. State, 178 S.W. 3d 833, 835 (Tex. Crim. App. 2005)	10
Reese v. State, 877 S.W. 2d 328, 337 (Tex. Crim. App. 1994)	11
So. Park v. Thompson, 851 F.3d 910, 921 (9 th Cir. 2007)	12
U.S. v. Hoffman, 832 F.2d 1299, 1303 (1 st Cir. 1987)	12
United States v. Descena, 287 F.3d 170-176 (2002)	12
Gibson v. Walsh, 2014 U.S. Dist. LEXIS 153620	12
Webb v. Texas, 409 95, 98, 93 S.Ct. 351 (1972)	12, 13, 19

STATUTES AND RULES

Tex. Code Crim. Proc. Art. 42.03 (1) (a)	5
Fed. R. Crim. Pro. 12.1 (a) (e) and 16 (b) (1) (c)	8, 23

TABLE OF Authorities Cont'd

Page Number

OTHER Cases

Lambert v. Blackwell, 387 F.3d 210, 260 (3 rd Cir. 2004)	13
United States v. Morrison, 535 F.2d 223 (3 rd Cir. 1976)	13
U.S. v. Hammond, 598 F.2d 1008 (1979)	13
U.S. v. Thomas, 488 F.2d 334 (6 th Cir. 1973)	
Wardlow v. Tex. Dept. Crim. Justice-Corr. Inst. Div. (2017 U.S. Dist. Lexis 133448)	13
U.S. v. Saunders, 943 F.2d 389, 392 (4 th Cir. 1991)	13

TABLE OF AUTHORITIES (Cont'd)

Page's

U.S. v. Scroggins, 379 F.3d 233, (July 26, 2004), revised, Aug. 11, 2005) in	15
Scroggins v. U.S. 453 U.S. 1112, 125 S.Ct. 1062 (2005 U.S. LEXIS 1288) followed by	15
U.S. v. Vanages, 157 F.3d 1185, 1189 (1998)	15
United States v. Montoya, 945 F.2d. 1068-1078 (9th Cir. 1991)	15
United States v. Rich, 580 F.2d. 929, 934 (9th Cir. 1978)	15
U.S. v. Whittington, 783 F.2d. 1210, 1218 (5th Cir. 1986)	16
Pennsylvania v. Ritchie, 480 U.S. 39, 56, 107 S.Ct. 989 (1987)	18
U.S. v. Bieganski, 313 F.3d. 264, 291 (5th Cir. 2002)	19
Cavett v. State, No. 07-17-00141-CR (Tex. App. Amarillo, 2018) WL 5075101	19
Brecht v. Abrahamson, 113 S.Ct. 1710 (1993)	19
United States v. Weddell, 800 F.2d. 1404, 1411 (5th Cir. 1986)	19

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 _____ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 10, 2023.

☒ 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: _____, 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 _____.
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

Page

Due Process of Law, (Fourteenth Amendment)	5, 13, 18, 22, 24
Compulsory Process, (Sixth Amendment)	5, 7, 9, 13, 18, 22, 24
Fourth Amendment	5, 13, 18, 22, 24
Confrontation Clause	7, 18, 22, 23
Sixth Amendment	9, 12, 13, 18, 22, 23, 24
Fifth Amendment	11, 15, 16, 18, 22, 24

PETITION FOR WRIT OF CERTIORARI

Petitioner Bryan Scott Cavett, Respectfully Petitions this Honorable Court for Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit and lower Courts decision, which denied an "COA" Application for Certificate of Appealability, pertaining to the Unpublished Denial of Petitioners §2254 as time barred, and the United States District Court for the Western District of Texas (USDC No. 1:22-CV-1092), which also denied an "Evidentiary Hearing", that thru Facts of ^{LAW} Submitted, Could have changed the outcome and opinion of reasonable jurist. United States Court of Appeals for the Fifth Circuit (No: 23-50314)

PETITIONERS OPENING PRAYER TO THE HONORABLE COURT

Comes Now, Bryan Scott Cavett, Petitioner, and Prays to God this Honorable Court to Review this Petition for Writ of Certiorari, Under the more liberal Standard established by this Honorable United States Supreme Court in: Haines v. Kerner, 404 U.S. 519 (1972) and (Hulse v. Owens; 63 F.3d 354, (5th cir 1995))

... "Pro se pleadings are to be Construed liberally and held to less stringent Standards than formal pleadings drafted by State Certified lawyers, if the Court can reasonably read claims to state a valid Cause of action upon which litigants Could prevail, it Should do so despite litigants failure to cite the Proper Authorities, Confusion of legal Theories, Poor Grammer, and Sentence Construction of a litigants Unfamiliarity with proper PLEADING REQUIREMENTS". ... Haines; 404 U.S. 519 (1972)

STATEMENT OF THE CASE

May 4, 2016, Cavett, here in after Petitioner was falsely accused, then later arrested thru a Grand Jury Indictment Warrant, for the Sole Charge of Indecency with a Child by Contact. Captain Lupe Carrazales being the investigating Officer. March, 7th 2017 Petitioner was found guilty by a then already tainted jury. Which Sentenced to a 20 years Confinement in the Texas Department of Criminal Justice, and later assessed a \$10,000 dollars fine to be paid to the McCulloch County, 452nd District Court. To this very Day, Cavett maintains he is 100% innocent of this alleged offence. Petitioner further maintains he has Diligently and on numerous occasions filed many Post-Conviction motion's, Writs of Mandamus, Bill of Review, Post Conviction innocence motion's, Innocence Project Application, 11.07, & 2254 Writs of habeas Corpus, Motion for "COA", Motion for reconsideration on Courts own motion/with appointment of Counsel, Motion to vacate opinion for lack of jurisdiction, due to the trial Courts Not pronouncing judgement and Sentence in defendants presence, per Code of Crim. Proc. Art. 42.03 (1)(a), motion for rehearing En banc, Both in the 452 District Court of McCulloch Co. Texas, and the Seventh Court of Appeals in Amarillo. Each and every filing, pertaining to innocence Claims, or Due Process rights violations, Constitutional Amendment violations, Compulsory Process, Fourth, Sixth and Fourteenth Amendment violations, and reversable errors. Due Now to the Clerk of the 452nd District Court Michelle Pitcox, Powers to dictate as a trial judge would, She will knowingly distribute all Petitioners Court Post-Conviction filings to (3) three different Court of Appeals, which would be, the Third, Seventh and Fourteenth Courts of Appeals. Petitioner is honestly lost as to why such was done, during his equitable tolling, 1 year Statue of limitations of the AEDPA.

STATEMENT OF CASE Cont'd

This Undue, Untimely process Confuses Petitioner, Now Subjecting him to further time delays in his 1 year tolling Statute under the extremely ever present hurddles established within the AEDPA. Especially for Prisoners in Custody for a Crime he did not Commit, and who is not well versed in the lingo of laws and statutes even a State Bar Certified Attorney has difficulty even navigating. But even thru all this Confusion and Petitioners, less then his trial attorney's ignorance of the law, which extremely prejudiced his Client at trial. Petitioner Still maintains his innocence, and that he recieved "IAC", ineffective assistance of Counsel. The Seventh Court of Appeals, Affirmed Petitioners Conviction from the trial Court after the fact is stated that Petitioner did recieve "IAC", for not objecting to bolstering Statements of the State's expert witnesses, Mike Mcshan, & Christy Robinson. Had trial Counsel hired his own Expert witnesses, they probabally Could of advised him of Such. Due to this lack of questioning, and Objecting when necessary to persue any actual line of defence, "There is a reasonable probability that, but for Counsels errors in failing to object to extensive inadmissible Critical testimony the result of the trial Proceedings would have been somewhat different." Strickland v. Washington, 466 U.S. 668, 690 (1994), at 686, 688 The U.S. Supreme Court made clear in Strickland that "trial Counsel has a duty to make a reasonable investigations or to make a reasonable decision that makes particular investigations Unnecessary". In Baker v. Quarterman, 497 F.3d. 459, (5th Cir. 2007), the Fifth Circuit Court of Appeals, Mandates trial Counsels "DUTY" is to independently investigate the Charges against his Client. Petitioner's trial counsel failed to make a "reasonable decision" Not too fulfill his "duty" to "independently" investigate the Sole charge of indecency with a child by Contact his Client was charged with.

Trial Counsel was appointed to Petitioner by the Court May 16, 2016, on or about. Petitioner's trial did not begin until March 6, 2017. Trial Counsel billed the Court for 38.30 hours related to his client's case. To even consider trial Counsel made a reasonable decision, to actually fulfill his "Duty" to investigate is ~~not~~ completely absurd. On 12/19/16 he notes 0.25 hrs. Spent on Phone Call with witnesses, Leandra Escobedo, and Thomas Rodriguez. It can only be concluded that trial Counsel spent a whopping 15 total minutes on what he considered a "reasonable investigation" speaking to his only two defense witnesses he subpoenaed for his client's (Petitioner's) trial. Who were then without an objection by Patrick Howard trial Counsel, after admonished by the trial Court judge, then threatened by the prosecutor that if defense witnesses Leandra Escobedo, and Thomas Rodriguez would be charged with probation violations, jail time, and future indictment by the grand jury. Not once did trial Counsel object to this prosecutor misconduct, towards his only two subpoenaed witnesses. The two defense witnesses showed up to petitioner's trial ready to testify in his defense, but left the Courthouse without providing their testimony that could of very well changed the outcome of the trial at hand. The United States Supreme Court noted in Melendez-Diaz v. Massachusetts, 129 S.Ct 2527 (2009), The Sixth Amendment guarantees a defendant the right to be confronted with the witnesses against him. While the Confrontation Clause guarantees a Criminal defendant the right to be confronted with the witnesses "Against him", The Compulsory Process Clause, guarantees a defendant the right to also call witnesses "In His Favor", United States Constitution, Amendment 6. The text of the amendment contemplates two very distinct classes of witnesses, those against the defendant, and then those who are "In His Favor". The Prosecution MUST produce the former; requiring defense Counsel, may call the latter. There is not a third category of witnesses, helpful to the prosecution, but somehow

Immune from Confrontation. Compulsory Process-Confrontation, establishes that it is Common to require a Defendant to exercise his right under the Compulsory Process Clause in advance of trial, announcing his intent to present Certain Witnesses, Fed. Rules Crim. Proc. 12.1 (a) (e) and 16 (b) (1) (C).

Petitioner's Trial Counsel did Subpoena two defense witnesses for his Clients defense. See Evidence marked, Exhibits (1) Subpoena for Leandra Escobedo, Exhibit (2) Subpoena for Thomas Rodriguez. So, there is no conceivable reason why a Criminal defendant Cannot Similarly be Compelled to exercise his Confrontation, Compulsory Process Clause rights to have witnesses testify on his behalf at a criminal trial in front of a jury of factfinders.

When trial defense calls to the stand, Leandra Escobedo to testify on Petitioner's behalf, she is quickly admonished and sworn in by the trial Court judge. Right away the state request an argues that Leandra Escobedo would be violating her probation if she continued to want to testify. Stating that Since she was recently placed on Adult Supervision for drug Charges, and a three year statute of limitations would apply for both Leandra Escobedo & Thomas Rodriguez to be able to testify in open Court for Cavett, (All of this bench conversation was deleted from the Original trial transcript that Petitioner requested from the Court Clerk several times over the last 8 years.) With out any objections from trial Counsel for the Petitioner, State's Prosecutor proceeded to threaten Leandra Escobedo, she would have her and Thomas Rodriguez, probation revoked, then file new charges as soon as Leandra stepped of the witness stand, and the prosecutor also threatend that both witnesses whould be indicted on new charges at the next Grand Jury Session. This is also Now missing from the Original trial transcript. The trial Court judge also had Deputy Sherriff Ty Tulley Call both witnesses Probation officers, Frank Trull and Johnathan over to the Courthouse to arrest

STATEMENT OF CASE CONT'D

them after their testimony. The trial Court judge even went as far to appoint Leandra & Thomas, a Court appointed lawyer (Terry Norman) See Exhibit (C), to advise them of their right. What was said, I can only speculate. But I do know that after a 30 to 45 minute secession with, Court Appointed Attorney, Terry Norman, State Bar #24048694, at 100 W. Main Brady Tx. 76825, both Leandra Escovedo and Thomas Rodriguez decided not to give their testimony because neither one of them wanted to go back to jail for any reason. Even if it meant telling the truth. Up till the day of Plaintiff's trial, both defense witnesses subpoenaed by trial Counsel Patrick Howard, were all hands in ready to openly testify on Petitioners behalf. Yet, in the end, the threats from the prosecutor, judge, and probation officers now present in the courtroom, scared Petitioners only two defense witnesses not to stick around and give their testimony after all. Simulany in Washington v. Texas 87 S.Ct. 1920 (1967) The Court stated "The right to offer the testimony of witnesses, and to compel their attendance, if necessary is in plain terms the right to present a defense, the right to present the defendants version of the facts, as well as the prosecutions to the jury so (they the fact finders) may fairly decide where the truth lies. Just as the accused has the right to confront the prosecutors witnesses, for purpose of challenging their testimony, Plaintiff has a right to fairly present his own witnesses to establish his defense. This is a Right, and is fundamental element of due process of law." See also Keller v. State, 646 S.W.2d 506 (1982), Under the Sixth Amendment to the United States Constitution, an accused has the Constitutional right to present witnesses in his own defense, See; Chambers v. Mississippi, Supra, 410 U.S. 284 (1973). In fact, the Sixth Amendment "right to offer testimony of witnesses, and compel their attendance, if necessary, is in plain terms the right to present a defense". See; Washington v. Texas, 87 S.Ct. 1920 (1967),...

STATEMENT OF CASE CONT'D

It is important to note to this Honorable U.S. Supreme Court, that the Petitioner believes that a Conflict of interest does exist between the attorney appointed to help admonish the defense witnesses. Because just the day before on March, 6, 2017, Terry M. Norman, State Bar # 2404894 was part of the Jury Venire, he was already aware, and familiar with Petitioners Case at hand. So he actually assisted in threatening Leandra Escobedo and Thomas Rodriguez. The trial court, prosecutor, and Petitioners trial counsel also knew of this and still there is no objection. As a critical element of the trial, threatening the two defense witnesses in this manner, prejudicially affected Petitioners substantial rights. The court of Criminal appeals not long ago, considered several cases involving the erroneous exclusion of evidence for the defense. The key was to whether a defendants substantial right were affected was whether the erroneous ruling prevented the defendant from presenting evidence on a critical element of the offense. As in the petitioners Case at hand, similarly, in Ray v. State, 178 S.W.3d 833, 835 (Tex. Crim. App. 2005) the trial court erroneously excluded the testimony of a witness who would have testified that he gave drugs to the driver of a car. A witness cannot refuse to answer a question that does not incriminate her because she could assert the privilege in response to some other question. Leandra Escobedo had already admitted to selling or possession of drugs, with is why she and Thomas Rodriguez were already on felony adult probation. Leandra and Thomas could not have further intended to incriminate themselves by saying they both had sold drugs to the Complaints, Mother Charlene Hines. Because both had already been convicted in the same 45th judicial district court, by the same District Attorney and same Trial Judge. Even for the prosecutor to assert the defense

STATEMENT OF CASE CONT'D

witnesses would be further punished by new indictment, probation revocation, and additional jail time if they both continued to testify on petitioners behalf, in rational terms, threaten the witnesses. The prosecution would be opening the doors for a Double Jeopardy violation. Because the State had already told the trial court judge, Both Leandra and Thomas would be violating their probation for a prior case in which both had already plead guilty to doing the same already. Both Defense witnesses testimony would have been crucial evidence to support Petitioners Claim that Charlene Hines, the Complaints mother had indeed had her daughter Emily Jones the Complaint around several other men while buying and under the influence of the drugs bought or purchased from Cavett's only two defense witnesses. In, Reese v. State, 877 S.W.2d 328, 337, (Tex. Crim. App. 1994), the Court noted a ~~witness~~ witness Cannot refuse to answer a question that does not incriminate her just because she could assert the privilege in response to some other questions. ("A witness may not withhold all the evidence demanded of him merely because some of it may be protected from disclosure by the Fifth Amendment."). Furthermore, the trial Court Certainly Could have insisted that the State Prosecutor hold to its Stated position that it only intended to ask if Frizzle, (Escobedo, & Thomas Rodriguez) had been charged with an offense. Because either party, defense especially had not intended to ask any questions that would tend to further incriminate her, So the trial Court erred when it allowed the prosecutor to continue its line of threats, forcing Petitioners Defenses off the stand in which Escobedo had already been admonished by the trial Court, which is on the record in the trial transcript at R/R pages, 133 thru 144, Exhibits C - 10 Pages!...

STATEMENT Contd

Any misconduct by a prosecutor, or any official of the Court, as stated in Soo Park v. Thompson, 851 F.3d 910, 921 (9th Cir. 2017), Because the Sixth Amendment creates rights against only the government, a Constitutional violation exists only if the prosecution caused the defendant's (Petitioner's Case at hand) difficulty in accessing the witness, ("our precedent clearly requires some 'causal link' between the government's conduct and the witness's decision not to testify...") (Collecting Cases); United States v. Hoffman, 832 F.2d 1299, 1303, (1st Cir. 1987) ("An accused must, at a minimum, demonstrate some plausible nexus between the challenged governmental conduct and the absence of certain testimony."); See also, United States v. Desena 257 F.3d 170, 176 (2002). Now, in Gibson v. Walsh, 2014 U.S. Dist. LEXIS 153620, the Court relied on Webb v. Texas, 409 U.S. 95, 98, 93 S.Ct. 351 (1972), which Plaintiff now also inserts. The Supreme Court, in Webb v. Texas, the seminal case on this issue, the Supreme Court reversed the Texas Court of Criminal Appeals and found the defendant had been denied Due Process where the trial judge gratuitously and unnecessarily singled out the defendant's only witness for a lengthy admonition on the dangers of perjury, assuring the witness that if he lied he would be prosecuted and probably convicted of perjury, that the resulting sentence would be added onto the one he was serving and impair his chances of parole. After this warning, the witness had refused to testify and was excused by the Court. In reversing the State Court, the Supreme Court recognized that a defendant's rights to present a defense is not absolute, but held that the government may not substantially interfere with the testimony of witnesses. Webb v. Texas, 409 U.S. 95, 98, 93 S.Ct. 351 (1972). Similarly, in Cavett's (Petitioner) Case here, and since Webb was decided, the Third Circuit followed suit, stating that "intimidation or threats from the government that dissuade a potential witness

from testifying may infringe a defendant's ... right to Due Process..." Lambert v. Blackwell, 387 F.3d. 26, 260 (3d Cir. 2009). Furthermore, although the trial judge was the target of the defendant's allegations of error in WEBB, the Webb holding has been extended to cover the actions and conduct of prosecutors. See, e.g., United States v. Morrison, 535 F.2d. 223 (3rd Cir. 1976), where the Court reversed the denial of the motion for a new trial, finding the actions of the prosecution denied defendant Due Process under the Fourteenth Amendment. The Court instructed that if the same witness was called at the new trial and invoked her right not to testify, a judgment of acquittal would be entered unless she was given immunity... Followed and Cited by U.S. v. Hammond, 598 F.2d 1008 (1979), and on the basis of Webb, both the third and the sixth Circuits have stated that they would not require a finding of prejudice in order to reverse a conviction because of this type of Due Process violation. United States v. Morrison, 535 F.2d. ²²³~~334~~ (3d Cir. 1976); United States v. Thomas, 488 F.2d. 334 (6th Cir. 1973). We agree with their analysis of Webb and hold that this type of Due Process Violation is harmful per se. Wardlow v. Dir. Tex. Dept. of Crim. Justice - Corr. Insts. Division, 2017 U.S. Dist. LEXIS 133448, Distinguished by, Thus, in that situation, (as in Petitioner's Case at hand), "improper intimidation of a witness may violate a defendant's Due process right to present his defense witness if the intimidation amounts to 'substantial governmental interference with a defense witness's free and unhampered choice to testify.'" United States v. Saunders, 943 F.2d 388, 392 (4th Cir. ¹⁹⁹¹~~1991~~) ... Petitioner's Claims here of his Due Process of Law, and the harmful violation of a fair trial, and Compulsory Process Clause of the Fourteenth and Sixth Amendment the Constitution still guarantees a Criminal defendant a meaningful opportunity to present a Complete Defense. Per Claim here, (1). States Prosecutor Tonya Spaeth Ahlschwede's Conduct amounts to,

"Substantial government interference" with a defense witness.
(2) Mrs. Ahlschwede's Conduct Caused Leandra Escobedo, and Thomas Rodriguez not to testify by threatening them with probation revocation. (See again Exhibit C (1-10 Pg 133 thru 144) of the Petitioner's Trial Transcript. What's missing from the record is the Prosecutor threatening the witnesses before the newly provided Court appointed attorney Terry Norman) (3) Leandra Escobedo and Thomas Rodriguez's testimony would have been favorable and also material facts for the jury. If, the testimony of both witnesses would of easily of shown the jury or at least presented a reasonable doubt that during the time Complaints mother was in fact buying, consuming, or taken drugs around other men, who were also doing the same with these drugs that were bought from Leandra Escobedo and Thomas Rodriguez. All of this was done while the Child Complaint was also present. Creating possible reasonable doubt that some other male could possibly have the opportunity to sexually assault the child complaint while her mother, and other men were under the influence of these purchased drugs from the Petitioner's threatened witnesses. It can easily be asserted then that the mother of the Complaint's daughter would devise a plan or story, then Coach Emily, the Complaint to say it was Petitioner who put a limp penis in her hand while sleeping, to cover-up what was really taken place at her drug dealers place, which just happened to be the Plaintiffs, (2) two defense witnesses Thomas Rodriguez and Leandra Escobedo. Both Defense witnesses had fact proving first hand knowledge that Charlene had her daughter present around other men, before, during, and after buying drugs and taken these drugs with both other men and her daughter the Complaint also there.

STATEMENT OF THE CASE Cont'd.

Similar to Petitioners Case and trial at hand, Petitioner also relies on United States v. Scroggins, 379 F.3d 233, (July 26, 2004), revised August 11, 2004, Vacated by, Remanded by, Scroggins v. U.S. 543 U.S. 1112, 125 S.Ct. 1062 (2005 U.S. LEXIS 1288); followed by, U.S. v. Vauages, 151 F.3d 1185, 1189 (1998); the Court emphasized that the district Court might have prevented the prosecutor's misconduct from prejudicing Vauages' defense by ensuring a proper basis for Manuel's invocation of the Fifth Amendment privilege or by requiring the government to grant her immunity for her testimony. See, United States v. Montoya, 945 F.2d 1068, 1078 (9th Cir. 1991). ("If it can be shown that there has been misconduct by the prosecutor, in intentionally causing a witness to invoke his Fifth Amendment privilege, ... Due Process Requires immunity to be granted. [**23]"). The district Court, however, waited until after Vauages had been convicted to explain the prosecutor's misconduct and took no curative action at anytime prior to, during, or after the trial. In these circumstances, we hold that the Court clearly erred in finding that Vauages' had not been prejudiced by the prosecutors substantial interference with Manuel's decision whether to testify, and we reverse Vauages' Conviction and remand for retrial.

The prosecutor's thinly veiled threats to revoke, Leandra Escobedo's and Thomas Rodriguez's Probation if they both Continued to testify in Plaintiffs defense, and then withdraw any plea agreement previously handed down and agreed to, Cannot be Condoned. Courts have recognized in related contexts, "its is very imperative that prosecutors and other officials maintain a posture of strict neutrality when advising witnesses of their duties and rights. Their role as public servants and as protectors of the integrity of the judicial process permits nothing less". U.S. v. Rich, 580 F.2d 929, 934 (9th Cir. 1978). The prosecutors Conduct, in this here Petitioners trial Case did Not live up to this Standard, Which Constitutes a "Substantial government interference".

STATEMENT Cont'd

Furthermore, A witness may not claim the privilege of the Fifth Amendment out of fear that he or she will be prosecuted for perjury for what he is about to say. The Shield against Self-incrimination in such a situation is to testify truthfully, not to refuse to testify on the basis that the witness may be prosecuted for a lie, or any testimony not yet told. To put it in a short Context, Leandra Escobedo and Thomas Rodriguez did not quite articulate a valid basis for asserting the privilege against Self-incrimination, and the trial Court erred in recognizing both witnesses blanket invocation of the Fifth Amendment.

U.S. v. Whittington, 783 F.2d 1210, 1218 (5th Cir 1986), The records will show in Exhibit C, 1-10 of the Court reporters records that the defense Called to the Stand, Leandra Escobedo and Thomas Rodriguez at pg. 133, Both were sworn in. At, ('RR' 134-2-6) the Court "Invoked The Rule", Trial Counsel then goes on to discuss Leandra's felony probation. Leandra Escobedo, affirmed, and acknowledged that she understood she could very well be discussing some things that might lead (lend) to her being criminally culpable to activities that the Statute of limitations has not passed and so she needs to be admonished very clearly about her own rights in this case. She tells (defense Counsel) she wants to testify to those things. The Court went on to acknowledge at ('RR' 140, 10-13), and ('RR' 140 5-8) that there was no objection to the line of questioning as to what other men, and we specifically drilled down into that issue. What other men has the Child been around?, then at ('RR' 140, 10-13), There was no objection. I (the Trial Court) think this, -- if there is testimony that during this time period that this witness saw this Child with other men, I think -- is something we can --. The trial Court judge then went on to questioning Leandra Escobedo, admonishing her in his own way. After the recess was taken, and before going back on the record, while Leandra was still on the stand

The State started talking about some three years statute of limitations rule about someone being on adult Felony probation, would be violating their probation, if they chose to testify for anyone in a Criminal proceeding. The State went on to start threatening Leandra Escobedo, she would have hers and Thomas Probation revoked, put them in jail, and make sure that both of them would be reindicted on new charges when the next Grand Jury convened. During this same time period, the judge, DA, and Baliff, Ty Tulley were on their cell phones calling for Leandra & Thomas probation officers who's offices were right across the street, the same as the new Court appointed attorney, Terry Norman who's office is just right across the street from the Court house too. All three men, Terry Norman, Leandra's now Court appointed attorney, and both Thomas and Leandra's Adult probation Supervisors, or officers, Frank Trull and Johnathan entered the Court room.

Petitioner Now asserts, he believes there to be a clear conflict of interest with the trial Court knowing then appointing Terry Norman to advise Leandra Escobedo of her right against Self-incrimination, and not to testify at all, due to his being part of the original jury pool and Venire for Petitioners Case. The Court, trial attorney, State's attorney, Terry Norman, and Ty Tulley, and Frank Trull and Johnathan knew ahead of time this is how things would play out. Now if this is not Clear intimidation of a defense, to scare them into not doing the right thing and telling the truth with their testimony, then I don't know what else to do. Cause I'm not a trained attorney, And the one I had appointed to represent me (Petitioner) Completely failed. Constituting a major Ineffective Assistance of Counsel Claim. See: Strickland v. Washington, 466 U.S. 668, 690 (1994)

REASONS FOR GRANTING THE PETITION

If it pleases the Honorable Court, Petitioner pleads he is not an State Certified Lawyer or otherwise. Rather he is an innocent man put on trial in a small town district Court, with no adequate affective assistance of Counsel, and to whom the deck was already Stacked. Texas is the only state where a false Conviction Can be allowed, with just the testimony of a child that is uncorroberated, and with absolutely not even a Scintilla of actual evidence. Defendants (Petitioner) only proof of innocent without actual evidence, and then too have his two witnessess who the trial court and State's prosecutor knew in advance of trial would be Subpeoned to testify in petitioners defense. (See Exhibit (A)(2)) Defense attorneys Application to issue Subpeonas. Both witnessess for the defense where at the Courthouse ready to testify, that the Complainants mother Charlene Hinds, bought, used, an had her daughter Emiley the Complainant at their place of residence, and while other Men where also around, creating an enviornment that could of became very dangerous for any female, or underaged female's around. And that is just how todays society precieves such instances. Where having any child in that type of enviornment, where absolutely anything can go wrong or happen, such as a drug induced Sexual Assault of any magnatude.

The Fifth, (b) Sixth, and Fourteenth Amendments of the U.S. Constitution Concomitantly provide a Criminal defendent with the Constitutional right to present a defense by Compelling the attendance and presenting the testimony of his own witnesses. (Pennsylvania v. Ritchie, 107 S.Ct. 898, 1987); Washington v. Texas, 87 S.Ct. 1920, (1967)

This right guarantees that a defendant may "present witnesses to establish his defense without fear of retaliation against the witness by the government" or any other improper governmental interference. United States v. Bieganowski, 313 F.3d 264, 291 (5th Cir 2002).

The Supreme Court stated that this particular "right is a fundamental element of due process of law" Washington, 388 U.S. at 19. The government, therefore, cannot substantially interfere with a defense witness's decision to testify without violating the defendant's due process rights. Webb v. Texas, 409 U.S. 95, 98, 93 S.Ct 351, 34 L.Ed 2d 330 (1972) (per curiam). Petitioner contends that not only were the trial court's admonitions of perjury considered a threat as well as the prosecutions, but as well the advice of independent counsel (Terry Norman; See Exhibit (A)-(1)) his advice was a conflict of interest, due he was part of the original jury venire the day before at Voirdire. In Petitioner's original §11.07, & §22.54 writs of habeas corpus proceedings the Habeas Courts should assess the prejudicial impact of any constitutional error in a state-court criminal trial under the "substantial and injurious effect" standard, this applies to also the Seventh Court of Appeals, in Cavett v. State, No. 07-17-00141-CR, 2018; (Tex. App.-Amarillo); WL 5075101, where the court affirmed IAC, under the 1st Prong of Strickland v. Washington, 104 S.Ct. 2052, (1984). In; Brecht v. Abrahamson, 113 S.Ct. 1210 (1993), it stated that the reviewing court must consider whether a constitutional violation "had a substantial and injurious effect or influence in determining the jury's verdict"; and in, United States v. Weddell, 800 F.2d 1404, 1411 (5th Cir 1986), also (holding that the district court, in a case involving governmental interference (as similarly done in Petitioner's case at hand) with a defense witness, must evaluate "How [the witnesses]'s testimony would have affected the jury's ~~assment~~ assessment of the evidence. The Seventh court of Appeals, Nor the 452nd State Court

however, did not do so and its consideration of Caution, or Causation as part of a harmless error analysis was and still is an unreasonable application of clearly established federal law as determined by the Supreme Court. Under certain circumstances, a judge's or prosecutor's threats or intimidation that dissuade a witness from testifying or persuades a witness using an intermediary court appointed attorney, familiar with the case at hand due to being part of the original jury ~~venue~~ venire, does indeed infringe a criminal defendant's due-process rights, is without a doubt Obstruction of Administration of Justice, and Perjury of Legal Ethics. Thus here, Petitioner's Claims for Violation for a fair trial, Ineffective Assistance of trial and appellant Counsel and denial of his Fourth, Fifth and Sixth Amendments to the U.S. and Texas Constitution were violated, these rights are a fundamental right of the due process clause of law. The trial Courts, and prosecuting District Attorney's Conduct amounts to "Substantial government interference" with a defense witness. Add to this, the Courts appointment of Terry Norman to further advise Leandra Escobedo to decide to change her testimony and plead the Fifth Amendment, by all this, Cavetts (Petitioner) trial was already decided before the jury even had a proper chance to hear all of the defense witnesses side of the truth. Leandra Escobedo, and Thomas Rodriguez testimony would of been favorable and even material in proving Petitioner's innocence. It would of shown the jury another side of the story, or at least give them some reasonable doubt that while the Complaints mother was buying, and consuming the purchased drugs from both Escobedo and Rodriguez. This was also done while other men were at the same place, buying and doing these same drugs. Enhancing a dangerous probability of some other male to sexually assault the

Complainant or any other female, or even male, while under the influence of these drugs. These types of assaults happen every day, and talked about on the news, not to mention all the T.V. Shows like Law and Order, Special Victims Unit. Society knows these type of Sexual assaults are a part of everyday life. And given the proper opportunity to have petitioners two witnesses actually testify, the jury's verdict may have very well of been not guilty. Also given the fact that there was no actual direct evidence to Show Indecency with a Child, with Contact, other than the Uncorroborated testimony of the Complainant. The State did ~~not~~ not prove its burden, or indecency with a child. They Completely Abused the legal justice System, and put an innocent man in prison. And worked with Petitioners trial Counsel Patrick Howard to do so. To Say he wasn't ineffective ~~is~~ and Understate ment. He did nothing to protect his client, in the interest of justice. He never once asked the Court for funding to hire expert defense witnesses to rebutt State's expert witnesses. Instead he asked for funding to buy the petitioner Cloths from the Salvation Army Store to wear to trial. Not once did trial Counsel object to his Subpoenaed Witnesses being treated the way they were. Petitioner Contends he also had IAC, when trial Counsel allowed the trial judge, and prosecutor to make a mockery of a innocent mans jury trial. His Soft questioning of the Complainant on the stand, amounted to "its all right little Emily", "I work for you and the Court too"!! Defense Counsel had more then ample, multiple opportunities to make Sustainable Objections, and offer up proof to the trial Court, and make a record of the information

for any appeal process, that would have been elicited from both defense witnesses, which could of been reserved for the appeal process if needed, had trial counsel been allowed to go into Escobedo & Rodriguez testimonies. Yet trial Counsel still did not object. The right to have the prosecution, and even trial Counsel's Cross-examination is not absolute, but it is effectively Denied when a defendant is prohibited from exposing to the jury the facts from which jurors, as the Sole triers of fact and Credibility, could appropriately draw inferences relating to the facts as well, the reliability of the defense witnesses. Therefore "Any absence of a proper Confrontation at trial calls into question the ultimate integrity of the fact finding process. This old fashioned fundamental right to properly examine a defense witness includes the opportunity to show not only the Court, but also the fact finders that other State or defense witnesses, can and may even be biased, or that the testimony may be somewhat exaggerated or Unbelievable, which constitutes a direct denial of any such cross-examination without proper waiver, would be a Constitutional error of the first magnitude." Whether it be directly rooted in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process, or the Confrontation Clause of the Sixth Amendment, the Constitution still Guarantees an even falsely accused Criminal defendant a meaningful opportunity to a fair trial, with effective Assistance of Counsel, and a right to present a Complete defense. It is a trial defense attorneys useful tool, and it is very common to require a defendant to exercise his right under the Compulsory Process Clause in advance of trial, announcing his intent duty to Subpoena and Present Certain defense witnesses.

Under, Federal Rules of Criminal Procedure, 12.1(a)(e) and 16(b)(1)-(c), So there is absolutely, No Conceivable reason why a defendant (Such as Petitioner) Cannot Similarly be so compelled to exercise his Sixth Amendment Right, to the Confrontation Clause, Petitioners trial attorney had Subpoena power, and Did Summon both defense Witnesses, Escobedo, and Rodriguez, See: Exhibit (A) - and Exhibit (B) (Subpoena, Summons)

Trial Counsel's Silence through out his only to defense witnesses being, intimidated, threatened, or just merely being talked or scared into Changing their mind to actually testify by pleading the Fifth, after Supposedly getting advice from a Conflict of interest, Court appointed is extremely harmful to Petitioner. If there had been any conceivable trial strategy at this point, he just remained silent. He wasn't there as was his assigned ethical duty to defend his innocent, falsely accused Client. Both Leandra Escobedo, and Thomas Rodriguez would of no doubt have testified in Petitioners Defense had they not been Scared into believing they would both have their probation revoked, and be reindicted if they Continued to want to tell the truth. As Petitioner Stated at the beginning, I am not a lawyer or attorney. Everything I do and file is Pro-se, and mail thru indigent mail through Coffield Unit Law Library where I sit for 10 hours a week studying laws I don't fully understand. So yes, I am ignorant of the law to some extent. But these are the reasons I've found so far for Granting the Petition of Writ of Certiorari, before my Case is time barred again. I Pray this Honorable Court to Please Grant Me the Petitioner Relief, so I may finally Go Home. Sincerely, *Bayron Scott Cavell*

PRAYER FOR RELIEF

Wherefore, premises Considered, Petitioner Respectfully prays that this Honorable Court Please Grant the Petitioners Contentions herein, reverse his Wrongful Conviction for violations of his Constitutional Rights Under the Fourth, Fifth, Sixth, and Fourteenth Amendments of the U.S. & Texas Constitution, and remand for a new trial or dismissal for lack of sufficient evidence, Ineffective Assistance of Counsel, Cavett, further prays for any other Relief in which this Honorable Court Deems as Justified and Proper Under Petitioners serious and extrodanary Circumstances depriving him of life and liberty.

Respectfully, Bryan Cavett

Date: 10/2/2023

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bryan Scott Cavett Pro-se

Date: October 2, 2023