

23-7396
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
FEB 08 2024
OFFICE OF THE CLERK

FRANCISCO MANUEL PADILLA — PETITIONER
(Your Name)

VS.

R. ARTAS, WARDEN (A) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT, STATE OF CALIFORNIA.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FRANCISCO MANUEL PADILLA
(Your Name)

7018 BLAIR ROAD
(Address)

CALIPATRIA CALIFORNIA 92233
(City, State, Zip Code)

N/A
(Phone Number)

NEW ADDRESS OF PETITIONER.

QUESTION(S) PRESENTED

IS IT THE AUTHORITY OF THE SUPERIOR COURT TO DEBASE THE CONSTITUTIONAL RIGHTS OF A DEFENDANT?

IS IT THE FOUNDATION OF THE SUPERIOR COURT TO BE OF DISCIPLINE CORRESPONDING TO A DEFENDANT [S] ATTORNEY TO MANIPULATE, VERBAL UNFORTUNATE, AND MISERY A CLIENT INTO PLEADING?

IS IT APPROPRIATE OF THE SUPERIOR COURT TO IGNORE THE CHARACTERISTICS OF INEFFECTIVE ASSISTANCE OF COUNSEL?

IS REASON, AND SOUND JUDGMENT THE ASCRIBE OF THE SUPERIOR COURT?

IF SO, WHAT REASON, AND WHAT SOUND JUDGMENT MASTERFULED THE SUPERIOR COURT UNCONSEQUENTIAL IN THIS MATTER?

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:

STATE OF CALIFORNIA ATTORNEY GENERAL.

RELATED CASES

SEE PAGE 10 .

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APPENDIX E	SUPREME COURT OF THE STATE OF CALIFORNIA DECISION.
APPENDIX F	FIFTH APPELLATE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA ORDER DENYING PETITION FOR REHEARING.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 **E** 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 **FIFTH APPELLATE DISTRICT** court appears at Appendix **F** 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 _____.

☐ 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 DEC 27, 2023.
A copy of that decision appears at Appendix E.

☒ A timely petition for rehearing was thereafter denied on the following date: 11/8/2023, and a copy of the order denying rehearing appears at Appendix F.

☐ 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

SEE PAGE

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STATEMENT OF THE CASE

ON SEPTEMBER 7, 2016, AFTER A PRELIMINARY EXAMINATION (1 CT 70-114), AN AMENDED INFORMATION WAS FILED CHARGING APPELLANT FRANCISCO PADILLA AND CO-DEFENDANTS ROLANDO MAGANA AND EDGAR PICAZO WITH VIOLATIONS OF PENAL CODE SECTION 187, SUBDIVISION (a), FIRST DEGREE MURDER (COUNT 1), PENAL CODE SECTION 664/187, SUBDIVISION (a), ATTEMPTED MURDER (COUNTS 2, 3, 4, 5), PENAL CODE SECTION 246, SHOOTING AT AN INHABITED DWELLING (COUNT 6), PENAL CODE SECTION 664/211, ATTEMPTED HOME INVASION ROBBERY (COUNT 7), PENAL CODE SECTION 245, SUBDIVISION (b), ASSAULT WITH A SEMIAUTOMATIC FIREARM (COUNT 8), AND PENAL CODE SECTION 459, FIRST DEGREE BURGLARY (COUNT 9). SPECIAL CIRCUMSTANCES WERE ALLEGED AS TO COUNT 1. (SEC. 190.2, SUBD. (a)(17).) FIREARM (SECS. 12022.53, SUBDS. (c), (d), (e)) AND GANG ENHANCEMENTS (SEC. 186.22, SUBD. (b)) WERE ALLEGED. IT WAS ALLEGED THAT MAGANA PERSONALLY INFLICTED GREAT BODILY INJURY. (SEC. 12022.7, SUBD. (a).) IT WAS ALLEGED THAT APPELLANT HAD ONE STRIKE (SECS. 1170.12, SUBD. (a) - (d), 667, SUBD. (b) - (i)) AND ONE SERIOUS FELONY (SEC. 667, SUBD. (a)). (1 CT 220-244.) APPELLANT ENTERED A PLEA OF NOT GUILTY. (1 CT 245.)

ON AUGUST 22, 2018, THE DAY TRIAL WAS TO BEGIN, THE PARTIES AGREED UPON A DISPOSITION. THE DEFENDANTS THEREAFTER WAIVED THEIR RIGHTS AND ENTERED PLEAS OF NO CONTEST TO THE MURDER AND ATTEMPTED MURDER CHARGES (COUNTS 1, 2, 3, 4, 5) AND ADMITTED FIREARM (SEC. 12022.53, SUBDS. (d), (e)(1)) AND GANG (SEC. 186.22, SUBDS. (b)(1), (5) ENHANCEMENTS. THE MINUTES SHOW THAT THE DEFENDANTS PURPORTEDLY WAIVED THEIR APPEAL RIGHTS. A FACTUAL BASIS -- THE POLICE REPORTS AND PRELIMINARY EXAMINATION -- WAS AGREED TO. THE INDICATED SENTENCE FOR ALL DEFENDANTS WAS 25 YEARS-TO-LIFE. (2 CT 323; 2 RT 10-44.) AS TO APPELLANT, THE STRIKE AND SERIOUS PRIOR FELONY ALLEGATIONS WERE STRICKEN (2 CT 238; 2 RT 30-31).²

ON NOVEMBER 28, 2018, APPELLANT SENT A HANDWRITTEN LETTER TO THE TRIAL COURT REQUESTING A MARSDEN³ HEARING FOR NEW COUNSEL AND A HEARING REGARDING WITHDRAWAL OF HIS PLEAS. (2 CT 339-340.) ON MAY 1, 2019, APPELLANT FILED A MARSDEN MOTION (2 CT 344-348) AND A MOTION TO WITHDRAW HIS PLEAS. (2 CT 349-351.) ON MAY 14, 2019, AFTER A HEARING, THE MOTIONS WERE DENIED. (2 CT 358; 3A RT 52-62.)

ON MAY 14, 2019, IN CONFORMITY WITH THE PLEA AGREEMENT, APPELLANT WAS SENTENCED TO 25 YEARS-TO-LIFE ON COUNT 1, CONCURRENT SENTENCES OF 7 YEARS TO LIFE WERE IMPOSED ON COUNTS 2, 3, 4, AND 5. THE FIREARM ENHANCEMENTS WERE STAYED. AS TO ALL COUNTS, PURSUANT TO SECTION 186.22, SUBDIVISION (b)(5), A MINIMUM PAROLE ELIGIBILITY TERM OF 15 YEARS WAS IMPOSED. APPELLANT RECEIVED 2,068 DAYS PRESENTENCE CUSTODY CREDIT. VARIOUS FEES AND FINES WERE IMPOSED. (2 CT 356-360; 3B RT 63-69.) APPELLANT WAS INFORMED THAT HE HAD "THE RIGHT TO APPEAL THE JUDGMENT AND SENTENCE OF THIS COURT." (3B RT 68.)

ON MAY 20, 2019, APPELLANT WAS ORDERED TO PAY \$5,705.20 IN RESTITUTION. (2 CT 387, 389-392.)

ON JUNE 17, 2019, APPELLANT, ON HIS OWN, FILED A NOTICE OF APPEAL. (2 CT 393-394.) ON DECEMBER 10, 2019, PURSUANT TO THIS COURT'S ORDER (SUP. CT 4) AND APPELLANT'S REQUEST (SUP. CT 6-14), THE TRIAL COURT GRANTED APPELLANT'S REQUEST FOR A CERTIFICATE OF PROBABLE CAUSE. (SUP. CT 12, 15.)

¹ "CT" REFERS TO THE CLERK'S TRANSCRIPT. "RT" REFERS TO THE REPORTER'S TRANSCRIPT.

² APPELLANT ALSO ENTERED A PLEA OF NO CONTEST IN ANOTHER CASE INVOLVING A CHARGE OF VIOLATING PENAL CODE SECTION 4502, SUBDIVISION (a) CUSTODIAL POSSESSION OF A WEAPON. (2 RT 37.) HE RECEIVED A PRISON TERM OF 2 YEARS, CONCURRENT WITH THE INSTANT CASE. (2 CT 354-255, 360; 30 RT 67.)

³ PEOPLE V. MARSDEN (1970) 2 CAL. 3d 118, 84 CAL. RPTR. 156.

REASONS FOR GRANTING THE PETITION

I. THE SUPERIOR COURT ON AUGUST 22, 2018 SET FORTH THE CHARGE OF MURDER TO COUNT 1. A NO CONTEST PLEA TO SAID CHARGE WAS ACCEPTED. THIS IS A STANDING CONVICTION. IN THIS CONVICTION BEING ACCEPTED, THERE IS NO FINDING OF WILLFUL, NO FINDING OF DELIBERATE, NO FINDING OF PREMEDITATED.

IT IS THE ADMISSION SOUGHT AFTER ACCEPTING A PLEA OF NO CONTEST THAT [~~28~~] THE CIRCUMSTANCES OF COUNT 1, SCRUTINY OF ALL MATTER PERTAINING TO COUNT 1 CLEARLY AUTHORIZATIVE THE PLEA AGREEMENT DID NOT STATE WILLFUL, DELIBERATE, AND PREMEDITATED CAUSE THUS, REVERSAL IS REQUIRED.

IT IS ESTABLISHED THAT THE SUPERIOR COURT ACCEPTED A NO CONTEST PLEA TO COUNT 1, THE CRIME OF MURDER, A VIOLATION OF PENAL CODE SECTION 187 WITH [~~NO~~] WILLFUL, DELIBERATE, AND PREMEDITATED CAUSE IN THE ACT AS A PLEA AGREEMENT. (SEE APPENDIX A. PAGE 13. LINE 4 TO 13.)

IT IS ESTABLISHED THAT THE SUPERIOR COURT WAS TOLD BY DEPUTY DISTRICT ATTORNEY MS. SAMANTHA ARNERICH [~~AFTER~~] ACCEPTING A PLEA OF NO CONTEST IN A PLEA AGREEMENT TO ADMISSION THAT THE AFORESAID MURDER WAS COMMITTED WILLFULLY, DELIBERATELY, AND WITH PREMEDITATION. THE SUPERIOR COURT SAID: ALL RIGHT. THEN ASKED DEFENDANTS TO PLEA NO CONTEST ONCE AGAIN UNDER MURDER WILLFUL, DELIBERATE, AND PREMEDITATED WHICH ~~28~~ OUT SIDE THE PLEA AGREEMENT. (SEE APPENDIX A. PAGE 13. LINE 15 TO 19.)

IT IS ESTABLISHED THAT THE SUPERIOR COURT DID [~~NOT~~] VACATE THE FIRST PLEA OF NO CONTEST THUS, TWO PLEAS OF NO CONTEST ARE OF RECORD FOR COUNT 1. (SEE APPENDIX A. PAGE 13. LINE 4 TO 26.)

IT IS RECOGNIZABLE THAT A NO CONTEST PLEA WITH NO WILLFUL, DELIBERATE, AND PREMEDITATED CAUSE IN THE ACT OF MURDER WAS ACCEPTED AS A PLEA DEAL. [WILLFUL, DELIBERATE, AND PREMEDITATED CAUSE IS FLAWED IN BEING A CONVICTION.] THE DISTINCTION OF COMMUNICATION FROM DEPUTY DISTRICT ATTORNEY MS. SAMANTHA ARNERICH TO THE SUPERIOR COURT AFTER THE SUPERIOR COURT HAD ACCEPTED A NO CONTEST PLEA WITH NO WILLFUL, DELIBERATE, AND PREMEDITATED CAUSE AS A PLEA DEAL ILLUSTRATE THIS AS A FACT.

APPELLANT HAS SET FORTH A PRIMA FACIE CASE FOR RESENTENCING UNDER PENAL CODE SECTION 1176.2 FOR COUNT 1, THE CRIME OF MURDER, A VIOLATION OF PENAL CODE SECTION 187.

REASONS FOR GRANTING THE PETITION

II. THE FINDINGS OF THE SUPERIOR COURT ON AUGUST 22, 2018 DID NOT ACCUSE NOR CONVICT APPELLANT ON THE PROVOCATIVE ACT DOCTRINE. THE SUPERIOR COURT USAGE OF THE PROVOCATIVE ACT DOCTRINE ON AUGUST 9, 2022 TO DENY APPELLANT A FINDING OF A PRIMA FACIE CASE TO COUNT 1, THE CRIME OF MURDER, A VIOLATION OF PENAL CODE SECTION 187 [28] A MISCARRIAGE OF JUSTICE. REVERSAL IS REQUIRED.

INTRUDER VICTOR DEHARO - HERNANDEZ [V.D.] HAD THE VICTIM EDDYE. THE LITTLE BROTHER OF VICTIM JOSE RODRIGUEZ AT GUNPOINT. THIS SOLE ACT OF VICTOR DEHARO - HERNANDEZ [V.D.] ~~28~~ WHAT MOVED VICTIM JOSE RODRIGUEZ TO FIRE ONE ROUND FROM HIS GUN. KILLING INTRUDER VICTOR DEHARO - HERNANDEZ [V.D.]

VICTIM JOSE RODRIGUEZ DID NOT SEE MR. MAGANA, MR. PICAZO, AND MR. PADILLA WITH INTRUDER VICTOR DEHARO - HERNANDEZ [V.D.] WITH HIS LITTLE BROTHER EDDYE AT GUNPOINT. HAD HE, MORE THAN ONE SHOT WOULD HAVE BEEN FIRED FROM HIS GUN.

THIS FACT IS DEPICTED IN POLICE REPORTS, COURT TRANSCRIPTS, AND DISTRICT ATTORNEY PETITIONS. ALSO THEREIN IS A FINDING THAT MR. PICAZO, AND MR. PADILLA HAD ~~NO~~ GUN. THAT BOTH [HID] DURING ALL FIRING OF GUNS. THIS WAS NOT THEIR PLAN NOR PLOT. THEY WERE ~~NOT~~ PREPARED FOR THESE ACTS.

THE SUPERIOR COURT DID NOT STATE THAT:

" THE UNDERLYING CRIMINAL OFFENSE IN COUNT 1, THE CRIME OF MURDER, A VIOLATION OF PENAL CODE SECTION 187 IN REGARD TO INTRUDER VICTOR DEHARO - HERNANDEZ [V.D.] IS A CAUSE UNDER THE PROVOCATIVE ACT DOCTRINE. (SEE APPENDIX A. PAGE 13, LINE 4 TO 26.) "

THE PLEA AGREEMENT DID NOT STIPULATE THE PROVOCATIVE ACT DOCTRINE.

THE SUPERIOR COURT, DEPUTY DISTRICT ATTORNEY MS. SAMANTHA ARNERICH, EACH DEFENDANT [S] ATTORNEY, AND APPELLANT ATTORNEY [S] ~~28~~ OF THE STATED FACTS DATED AUGUST 22, 2018. (SEE APPENDIX A. PAGE 5 TO 29.) [NO] PROVOCATIVE ACT DOCTRINE HAS BEEN THE FINDING IN THE CAUSE OF THE CRIME OF MURDER. ON AUGUST 9, 2022 THE SUPERIOR COURT FOUND IT APPROPRIATE TO [DENY] EACH DEFENDANT OF PENAL CODE SECTION 1176.2 BASED ON THE PROVOCATIVE ACT DOCTRINE. (SEE APPENDIX B. PAGE 60. LINE 16 TO 23.) IT IS AN UNKNOWN ACCUSATION, AND A UNKNOWN CONVICTION TO [ALL] PARTIES. CAN THIS COURT FIND WERE EACH DEFENDANT WAS ADVISED BY THE SUPERIOR COURT OF THIS ACCUSATION, AND CONVICTION OF MURDER UNDER THE PROVOCATIVE ACT DOCTRINE ON AUGUST 22, 2018? (SEE APPENDIX A. PAGE 5 TO 29.)

APPELLANT HAS SET FORTH A PRIMA FACIE CASE FOR RESENTENCING UNDER PENAL CODE SECTION 1176.2 FOR COUNT 1, THE CRIME OF MURDER, A VIOLATION OF PENAL SECTION 187. HE DID ~~NOT~~ COMMIT THE ACT OF MURDER UNDER THE PROVOCATIVE ACT DOCTRINE.

REASONS FOR GRANTING THE PETITION

III . THE DISCIPLINE CORRESPONDED BY THE SUPERIOR COURT IS A PRODUCING OF IMPROPER. ERROR HAS VIOLATED THE CONSTITUTIONAL RIGHTS OF APPELLANT IN DENYING HIS MARSDEN MOTION AND HIS MOTION TO WITHDRAW HIS PLEAS OF NO CONTEST THUS, REVERSAL IS REQUIRED.

IT IS NOT HYPOTHETICAL TO STATE WHAT THIS COURT IS IN CONSIDERATION OF IN REASONS FOR GRANTING THE PETITION I . , AND REASONS FOR GRANTING THE PETITION II . , TO STATE A DEFENSE FOR COUNT 1 , THE CRIME OF MURDER , A VIOLATION OF PENAL CODE SECTION 187 [~~EX207~~] .

IT IS NOT HYPOTHETICAL TO STATE :

" THIS DEFENSE PROVE BEYOND A REASONABLE DOUBT THE INNOCENCE OF APPELLANT. "

THE MALEFACTOR IS NOT APPELLANT.

MUTE IS NOT THE TRANSCRIPT :

- * APPELLANT HAS AN ALIBI WITNESS.**
- * APPELLANT DID NOT RECEIVE FULL DISCOVERY THUS , HE WAS [NOT] APPRISED OF ALL EVIDENCE AGAINST HIM , OR FOR HIM.**
- * APPELLANT HAS IGNORANT TO TANGIBLE MATTERS BEFORE THE SUPERIOR COURT DUE TO THE FAILURE OF HIS ATTORNEY.**
- * APPELLANT COULD NOT PROPERLY AND ADEQUATELY CONSIDER THE OPTIONS OPEN TO HIM . HIS ATTORNEY DID NOT PRESENT OPTIONS , [ONLY] TWO PLUS HOURS OF MANIPULATION , VERBAL UNFORTUNATE , AND THE MISERY OF PLEADING NO CONTEST THAT THE SUPERIOR COURT CORRESPONDED TO BE DONE .**

THE SUPERIOR COURT 'S CORRESPONDING TO EACH DEFENDANT [S] ATTORNEY MONUMENTALED IN DISCIPLINE CORRESPONDING IMPROPER . ERROR VIOLATED CONSTITUTIONAL RIGHTS . (SEE APPENDIX C . PAGE 45 . LINE 9 TO 11 .)

REASONS FOR GRANTING THE PETITION

**IV . IRRETRIEVABLY BROKEN DOWN ATTORNEY - CLIENT RELATIONSHIP
PURPOSED AGAINST EFFECTIVE ASSISTANCE OF COUNSEL .FROMTHENCE ,
APPELLANT SUFFERED INEFFECTIVE ASSISTANCE OF COUNSEL THUS ,
REVERSAL IS REQUIRED .**

**THE IDEA OF APPELLANT'S ATTORNEY PRISTINED IN [NO] DEFENSE .THE
RIDICULE MADE OF APPELLANT BY HIS ATTORNEY IS OBSERVATIONED IN :**

- * ATTORNEY DOES NOT RESPOND TO REQUEST.**
- * ATTORNEY DOES NOT PROVIDE FULL DISCOVERY.**
- * ATTORNEY DOES NOT FIND ALIBI WITNESS.**
- * ATTORNEY DOES NOT HIRE AN IDENTITY EXPERT.**
- * ATTORNEY DOES NOT ADDRESS SENATE BILL 1437.**
- * ATTORNEY DOES NOT ADDRESS THE EVIDENCE IN FAVOR OF APPELLANT.**
- * ATTORNEY CARRIES OUT THE DISCIPLINE CORRESPONDED BY THE SUPERIOR
COURT TO MANIPULATE ,AND VERBAL UNFORTUNATE APPELLANT TO BRING
FORTH THE MISERY OF PLEADING NO CONTEST.**

**APPELLANT BEING PSYCHOLOGICALLY AFFECTED IS SEEN IN APPENDIX C . PAGE
41 TO 46 , AND APPENDIX D . PAGE 126 DEFENDANT'S STATEMENT . APPELLANT'S
ATTORNEY EXACTED INEFFECTIVE ASSISTANCE OF COUNSEL CATEGORICALLY.**

REASONS FOR GRANTING THE PETITION

POINTS AND AUTHORITIES ARGUMENT

CASE LAW, RULES OF THE SUPERIOR COURT OF CALIFORNIA STATE SET FORTH GUIDELINES ESTABLISHING PLEA AGREEMENT. THE UNITED STATES CONSTITUTION SET FORTH THE GUARANTY OF RIGHTS DISCOURSED IN AMENDMENTS. THE PREJUDICE OF THIS PLEA AGREEMENT CONFERRED TO APPELLANT IN GAMBIT:

- * THIS IS YOUR PLEA AGREEMENT.
- * NO, THIS IS YOUR PLEA AGREEMENT.
- * THIS IS WHAT YOU DIDN'T KNOW ABOUT YOUR PLEA AGREEMENT.

IS DEPLORABLE VIOLATIONS IN IMPOSING THE LAW.

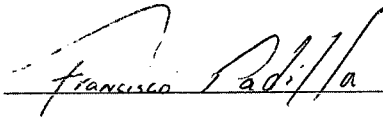
IN PERTAINING LAW RECOGNIZED BY THIS COURT, APPELLANT ASK THAT THIS COURT PRINCIPLE REASONS FOR GRANTING THE PETITION I, II, III, AND IV. DISABLED IS THE STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. SELF'EVIDENT IS ITS INABILITY TO PROVIDE A COMPETENT LAW LIBRARY THAT IS AGREEABLE TO THE SPECIFICATION STATED BY THE COURTS OF THE STATE AND UNITED STATES THUS, APPELLANT IS PHYSICALLY DIVERTED FROM OBTAINING THE DICTATE OF CONSTITUTION, LAW, CASE LAW, AND RULES OF THE COURT. SHALL THIS COURT CROSS THIS ROAD WITH APPELLANT.

CONCLUSION

**MATTERS HEREIN ARE NOT SUPERFICIAL. EMPHASIZED IS THE NEED FOR
REMEDY TO THE SUCCESSION OF CONSTITUTIONAL VIOLATIONS. THE
NATION WIDE RELEVANCE IS BEFORE THE COURT.**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2/6/24