

No. 9Th Cir.No.23-2149

D.C.No. 2:22-cv-0296-Tor.

IN THE  
SUPREME COURT OF THE UNITED STATES

JOSE MARIO LOPEZ CARRILLO — PETITIONER  
(Your Name)

vs.

JASON BENNETT-SUPERINTENDENT — RESPONDENT(S)  
ATTORNEY GENERAL OF WASH. CORR. DIV. PO BOX.40116. OLYMPIA WA.96504-0116  
ON PETITION FOR A WRIT OF CERTIORARI TO

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

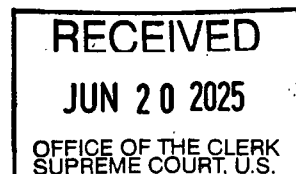
PETITION FOR WRIT OF CERTIORARI

JOSE MARIO LOPEZ CARRILLO. DOC #411726-Cel.65.L  
(Your Name)

STAFFORD CREEK CORR.CENT. 191 CONSTATINE WAY  
(Address)

ABERDEEN WA. 98520  
(City, State, Zip Code)

(Phone Number)



### QUESTIONS PRESENTED

1. Whether fail to provide Discover was ineffectice assistance of Counsel ?

2. Whether the indictment of information was deficient by laking elements of essential facts require by statute ?

Was Mr Lopez, imprisonment under defective indictment ?

Was the indictment of charges can be prove beyond reasonable doubt when all the allegations in the indictment was no support by the record.?

3. Was none disclosure favorable evidence, like scientific DNA, Physical examination Reports prior to trial Constitute Brady violation ?

was Due Process violated by prosecution fail to disclosed Brady material?

4. Was the Sixth an Fourteenth Constitutional rights violated by trai court interference to defense counsel to investigate the case.?

Was the preparation for trail was prejudice ?

5. Was The Constitutional right to counsel violated by trial court compel defense counsel to labor on conflict of interest after court was

Inform the he cannot provide Constitutional assistance to his client?

Was the right to counsel violated by fail to provide unconflicted counsel?

6. Was the Sixth an Fourteenth Amendment violated by trail obstructed the process of law upon the defendant constitutional rights.?

7. Was the Sixth an Fourteenth Constitutional right violated by counsel fail to investigate an present evidence the exculpate the defendant?

Was Trial Court Committed legal error by no aplying the facts to case ?

8. Was Due Process Violated by trail judge holding out court meeting an her Chamber's wit a witness for the prosecution on same case ?

Was the trial judge committed impermissible unconstitutional plain error ?

9. Was the Fourth Amendment violated by Police Charged, an arrest without Probable cause an without process ?

Was The R&R using the exclusionary rule conflict with U.S. Supreme Court ?

Was the Constitutionally of the Act of Congress draw into question ?

RELATED CASES

LIST OF COURT OPINIONS

1. APRIL 18, 2025. U.S. SUPREME COURT. No 23-2149., D.C. #2:22-CV-00296-TOR. PETITION FOR CERTIORARI WAS RETURN FAIL TO COMPLY WITH Rule 14.1(g). and AND A CONCISE STATEMENT OF CASE. see. APPENDIX. A.3
2. JANUARY 24, 2025. U.S. SUPREME COURT PETITION FOR WRIT certiorari WAS RETURN UNCLEAR WHAT JUDGEMENT IS TO BE SOUGHT. No 23-2149., APPENDIX. A.2
3. SEPTEMBER 12, 2024. THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT No. 23-2149., D.C. No. 22:22-CV-00296-TOR. MOTION FOR RECONSIDERATION DENIED IN BEHALF OF THE 9TH CIR. R. 27.10., 9TH CIR GEN. ORD. 6.11. Hon CALANHAN, And M. SMITH. Circuit judges.
4. AUGUST 18, 2023. U.S. DISTRICT COURT EASTERN of WASHINGTON, (Spokane) No. 2:22-CV-00296-TORT. (Deny with prejudice Habeas Corpus) Ho. THOMAS RICE
5. OCTOBER 12, 2022. SUPREME COURT OF WASHINGTON STATE. DEPUTY COMMISSIONARY WALTER M. BURST. (denying discretionary review). No. 100520-2. COA #36436-111) (: Did not show Counsel was ineffectuated.)
6. DECEMBER 16, 2021. COURT OF APPEALS Div. 111 of WASHINGTON STATE. ORDER DISMISSING PERSONAL RESTRAINT PETITION) (frivolous) No. 38124-2-111. Acting Judge LAUREL SIDDOWAY.
7. MARCH 17, 2020. No. 36436-4-111 THE COURT OF APPEALS OF WASH. DIV. 111. (UNPUBLISHED OPINION) JUDGE's (LAWRENCE-BERRY C.J., KORMO J., FERARING. J.

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5. MAKIA HANS TR. 175-182
6. STEPHEN EVITT TR.129-140, and TR 140-255.
7. ETHAN SMITH (Forensic) TR.257-272
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9. JOSE MARIO LOPEZ CARRILLO. TR. 304-340
10. DR. BETHANY LYNN. TR.347-374.

## EXHIBITS

- EXHIBIT 1. ATTEMPTED TO OBTAIN DISCOVERY FROM BOTH COUNSEL'S.
- EXHIBIT 2. ETHAN SMITH (forinsic) ITEMS TESTED FOR DNA
- EXHIBIT 3. DR. BETHANY LYNN
- EXHIBIT 4. MD. DR CALRK (Diagnosis)

# LIST OF PARTIES

# COURTS OPINIONS

- E* 1. MARCH 17, 2020. No. 36436-4-111. The Court of Appeals of Wash. Div. 111. (Unpublished Opinion) Judge's. (Lawrence-Berry, C.J., Korsmo J., Fearing. J.)
- D* 2. DECEMBER 16, 2021. No. 38124-2-111. Court of Appeals Div. 111. of Washington State. (Order dismissing Personal Restraint Petition) (frivolous) Acting Judge. LAUREL SIDDOWAY.
- C* 3. OCTOBER 12, 2022. SUPREME COURT OF WASHINGTON STATE. Deputy Commissioner WALTER M. BURTS. Denying Discretionary review. No. 100520-2. Court of Appeals No. 38124-2-111) ("did not show counsel was ineffectuated")
- B* 4. AUGUST 18, 2023. U. S. DISTRICT COURT EASTERN OF WASHINGTON (Spokane). -0 No. 2:22-CV-0296-TOR. (Order Denying for Writ HABEAS CORPUS. United States District Judge. THOMAS RICE. (Denying with Prejudice).)
- A-1* 5. JULY 31, 2024. UNITED STATES OF COURT OF APPEALS FOR THE NINTH CIRCUIT. No. 23-2149.; D.C. No. 2:22-CV-00296-TOR. Appellant's Motion for extension of time to file a Motion for Reconsideration. (Docket No. 10) Granted. Judge's CALLAHAN and M. SMITH. Circuit Judges)
- A* 6. SEPTEMBER 12, 2024. U.S. COURT of APPEALS for NINTH CIRCUIT. No. 23-2249. D.C. No. 2:22-CV-00296-TOR. Eastern Washington Spokane. (ORDER Before CALLAHAN and M. SMITH. Circuit judges. Motion for reconsideration en banc Docket Entry No. 12) Denied in Behalf of the court. 9th Cir. R. 27.10., 9th Cir. Gen Ord. 6.11.
- A-1* 7. DECEMBER 11, 2024. U.S. SUPREME COURT PETITION FOR WRITH Certiorari. the petition was return fo@ the following reasons. Unclear wich judgement sought to review. Lopez Carrillo v. Bennett. USAP9 No. 23-2149.
- A-3* 8. APRIL 18. SUPREME COURT of the UNITED STATES. OFFICE of the CLERK. (2025) D.C. No. 20543-0001. Petition for writ Certiorari was return for fail to comply with Rule 14.1(g) A Concise Statement of Case. USAP9 No. 23-2149.

APPENDIX

APPENDIX A. ORDER DENYING REHEARING (en banc) SEPTEMBER 12, 2024. No. 23-2149  
D.C. #2:22-CV-00296-TOR. Under 9th Cir. R. 27-10., an Gen. Org. 6.11  
Hon. CALLANHAN and M. SMITH. Circuit judges.

APPENDIX B. ORDER DENYING HABEAS CORPUS. AUGUST 18, 2023. Hon. THOMAS RICE.  
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APPENDIX C. APRIL 18, 2017. (Charging documents.) (C.1., 2., 3.

APPENDIX D. APRIL 19, 2017. (PRELIMINARY HEARING) No. 17-1-00219-5

APPENDIX H. MAY 03, 2017. (ARRAIGNMENT) No. 17-1-00219-5.

APPENDIX J. MAY 03, 2017. (DISCOVERY PETITION)

APPENDIX J. MAY 24, 2017. Hearing No. 17-1-00219-5. Hon. ALICIA NAKATA.

APPENDIX K. OCTOBER 18, 2017. (Disqualification of counsel., Hon. LESLEY ALLAN.  
No. 17-1-00219-5., COA #36436-4-111

APPENDIX L. NOVEMBER 09, 2017. (3.5. Finding facts and conclusion of law.  
Strike out) No. 17-1-00219-5., COA #36436-4-111. Hon. ALICIA NAKATA

APPENDIX M. JANUARY 10, 2018. MOTION FOR INTERVIEW WITNESS. No. 17-1-00219-5  
Hon. ALICIA NAKATA.

APPENDIX N. JANUARY 18, 2018. HEARING . NO. 17-1-00219-5., COA #36436-4-111.  
Hon. KRISTINE FERRERA

APPENDIX O. JANUARY 24, 2018. DENYING MOTION FOR INTERVIEW. No. 17-1-00219-5  
COA #36436-4-111. Hon. KRISTINE FERRERA.

APPENDIX P. APRIL 25, 2018. JUDGE KRISTEN FERRERA RECUSAL. No. 17-1-00219-5

APPENDIX Q. CIVIL DOCKET D.C. No. 2:22-CV-00296-TOR

APPENDIX R. STATE DOCKET. No. 17-1-00219-5

APPENDIX S. STATE COURT DOCKET. No. 17-1-00219-5

APPENDIX T. R&R (Respond to Answer.

## EXHIBITS

EXHIBIT 1. ATTEMPTED TO OBTAIN DISCOVERY FROM BOTH COUNSEL'S

EXHIBIT 2. ETHAN SMITH (Forensic) ITEMS TESTED FOR DNA.

EXHIBIT 3. DR.BETHANY LYNN

EXHIBIT 4. MD Dr.CLARK (Diagnosis )

STATE COURT PROCEEDING

APRIL 18, 2017. JOSE MARIO LOPEZ CARRILLO, was arrested on charge with five counts of child molestation on the third degree, and put in jail detective STEPHEN EVITT. APPENDIX H-2., (CHA. (C) (charged documents)

1. APRIL 19, 2017. Preliminary hearing, Appointe counsel JEREMY WALLACE, was no present. APPENDIX D-1, EX. 5. (F)
2. MAY 03, 2017. Arraignment, Mr. WALLACE was no present. APPENDIX E-E-(1)
3. MAY 10, 2017. Court order telephone contact with Mr. Lopez, Mr WALLACE never call. see HEARING May 24, 2017. P.14.pg.24-25. ABA 4-3.9. APP-G
4. MAY 24, 2017. Hearing, Judge ALICIA NAKATA, WALLACE no show APPENDIX-G.)
5. OCTOBER 18, 2017. Hon. LESLEY ALLAN. Replacement of counsel. APPENDIX-H) see, HEARING OCTOBER 18, 2017.

SECOND COURT APPOINTED COUNSEL TRAVIS BRANDT.

6. NOVEMBER 09, 2017. Hon ALICIA NAKATA. The 3.5 finding fact and conclusion of law was strike out., decision for interview alleged victim and witness was Mr. BRANDT "he need to determine if he need reinterview the alleged victim and witness or not." see, Hearing NOVEMBER 09, 2017. APPENDIX-I.
7. JANUARY 10, 2018. Hon. KRISTINE FERRERA. MR. BRANDT Motion for interview the alleged victim and witnesses. based after spoke with Mr WALLACE, of interview he perform to A .L. was no audio or video recorded and was no transcripts of such interview, was no evidence of rape or sexual abuse or sexual assault. see, Hearing JANUARY 10, 2018., APPENDIX-J
8. JANUARY 18, 2018. Hon. KRISTINE FERRERA, Court add more charges based upon interview of A.L. which Mr. Lopez have no record or transcripts of such interview. see Hearing JANUARY 18, 2018. APPENDIX-K Motion for interview.
9. JANUARY 24, 2018. Hon. KRISTINE FERRERA, denied the Motion for interview alleged victim and witnesses, to investigate the case, and subject to meaningful adversarial testing. see, Hearing JANUARY 24, 2018., APPENDIX-L
10. APRIL 25, 2018. Hon. KRISTINE FERRERA, Mr BRANDT find the Judge FERRERA having out-court meetings in her Chamber with a witness for the prosecution of same case. "spiking and vouching about the case" Judge said to the witness the "she will put Mr. Lopez in prison for a long time" see, VERBATIM REPORT of APRIL 25, 2018. APPENDIX-M., and EX. (D-B)(D-A)

- state court - cont.
11. NOVEMBER 14, 2018. Lopez was convicted of First degree Child molestation Second degree of child molestation, & Third degree of child rape. Hon. Judge LESLEY ALLAN.
  12. Mr. Lopez challenging the legality of his conviction, because he was imprisonment on violation of Constitutional Rights and laws of the U.S. by file a Direct appeal (no remember date )
  13. MARCH 17, 2020. The Court of App Div. 111. State of Wash. No. 36436-4-111. Unpublished Opinion. Issues presented (a) Violation of Due Process by admitting Expert testimony. on violation of Fed.R. & ineffective assistance of counsel by denied of interview witnesses. enter by Judges LAWRENCE BERREY, C.J., KORSMO J., FEARING, J.
  14. APRIL 12, 2021. File (PRP) with Nine Claims of Constitutional violation.
  15. DECEMBER 16, 2021. Court of Appeals of the state of Wash, Division 111. Dismissing Personal Restraint Petition. No. 38124-2-111. CHIEF JUDGE LAUREL SIDDOWAY.
  16. MR. LOPEZ. seek discretionary review to the WASHINGTON STATE SUPREME COURT. which was denying the discretionary review on OCTOBER 12, 2022. by WALT M. BURTS. DEPUTY COMMISSIONER. No. 100520-2. Presenting nine claim
  17. Mr. Lopez file a Petition for Writ of Habeas Corpus to UNITED STATES DISTRICT COURT. EASTERN WASHINGTON. No. 2:22-CV-0296-TOR. Was denying on AUGUST 18, 2023. Hon. TOMAS RICE. Mr. Lopez file the same Nine Claims.
  18. OCTOBER 10, 2023. APPELLANT INFORMAL OPENING BRIEF Mr. Lopez send to the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. 9th Cir. No. 23-2149 D.C. No. 2:22-CV-00296-TOR. Request for Writ a (COA)
  19. JULY 31, 2024. file extension of time until AUGUST 30, 2024. No. 23-2149. to the U.S. COURT of APP. for the NINTH Cir. D.C. No. 2:22-cv-00296-TOR.
  20. SEPTEMBER 12, 2024 DENYING Hearing and Hearing en banc. Judges CALLAHAM, and M. SMITH. 9th Cir. No. 23-2149., D.C. No. 2:22-cv-00296-TOR. DENYING on behalf of the court. see 9th cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.
  21. DECEMBER 11, 2024. file Petition for WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT. WASHINGTON D.C. Which was return "unclear which judgement sought to be review. LOPEZ v. BENNETT, No. 36436-4., No. 23-2149
  22. MARCH 26, 2025, Petition for writ Certiorari return, need singature. U.S. SUPREME COURT. RE: LOPEZ v. BENNETT. USAP9 No. 23-2149.

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 AUGUST 18, 2023; 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.

1.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was SEPTEMBER 12, 2024

☐ 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: SEP 12, 2024, 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 JULY 31, 2024 (date) on AUGUST 30, 2024 (date) in Application No. 10 A GRANTED

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).

U.S.SUPREME COURT HAVE JURISDICTION UNDEN 28USC §1254(1)

To review decision of Federal Courts and Districts Court as a last resort. The District Court and the Court of Appeals for the Ninth Circuit denied for request for (COA). In Hohn v. United States, 524,U.S.236,(1998). This Court Held that, Pursuant 28 USC §1254(1) The U. S. Supreme Court has Jurisdiction, on certiorari to review a denial for (COA)by a Circuit Judge or panel of Federal Court of Appeals.see Act of 1891,517,6,26,Stat 826.828 Ps. Here in Case claims are issue the are bring in question the Rights Protected by the Constitution, and laws of the United States, and are draw in question 28.USC §2403(a)(b) and are of public importance, and need the proper resolution, of the denial of Constitutional right to petitioner, resulted in imprisonment od Lopez, on violation of rights protected by the Constitution.

- 1.The Judgment and sentence entered on NOVEMBER 14,2018. TR.476-478
- 2.The District Court denied of Habeas Corpus was final on AUGUST 18,2023
- 3.Petitioner timely file Hearing an Re-hearing en banc, was denied on SEPTEMBER 12,2024.
- 4.Petitioner timely file all with time the sapecified. on RCW 10.73.090.

For these Reasons JOSE MARIO LOPEZ CARRILLO Respectfully ask these Hon. Court for review of the Goriund Case".

Mr.Lopez is now 73 years old and s permanent resident of the United States for about 50 years or more with no prior criminal record or History. and in relation to his Character can be ask to any one who know him they will testify about his Character. including here in prison.

Based upon the foregoing these court should grant relief of cusatody or a writ of Certiorari. So the end of justice be serve. these case claims, are such imperative public importance as deviation from normal appellate practice by courts decision conflicting wit the U.S.Supreme Court Authorities and it require immediate determination in this court USC §1254(1).,1201(e)

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## GROUND ONE

The sixth Amendment of U.S. Constitution guaranteed effective assistance of counsel at every stage of the criminal proceedings."

Strickland v. Washington, 466 U.S. 668, 694, 194 S.Ct. 2052, 80 L.Ed.2d 674 (1984)  
18 USCS §3006A, Powell v. Alabama, 287 U.S. 24, (1932).

## FACTS

~~"DEFENSE"~~ counsel was deficient and prejudicial by fail to provide discovery was requested May 03, 2017. although the petitioner ask for Mr Wallace for the period of Six Months his respond was the he not have it. Lopez claimed that the state no produce the discovery. it is clear in his PRP.D.2.Dg.1-8 that Mr.Lopez been asking to his attorney's for the discovery.because the attorney's never went over Police investigation report, witnesses reports, physical examination scientific reports. The Appellate Court erroneous took Lopez, inelegant Pro-se written grounds to be asking for relief based on the state withholding the Discovery. if the court give his know limitation with English and his lack understanding of applicable law. The court should have exercise her discretion under GR.33 and RCW 10.73.150.

Ground should have been interpreted to be ineffective assistance of counsel when counsel's duty to prepared for trial was deficient and prejudicial by

1.April 19, 2017. Pre-liminary hearing, Wallace was no present. APPENDIX-B

2.May 03, 2017. Arraignment Mr.Wallace no show. APPENDIX-H

3.May 10, 2017. Court order telephone communication. Wallace never call

4.May 24, 2017 Hearing Mr Wallace no show. APPENDIX-J

5.October 18, 2017 Disqualification of counsel APPENDIX-K

Was Mr.Wallace conduct a interview to A.L. he no recorded Prejudicials to defendant.?

6.Nov.09, 2017. Hearing 3.5 strike out. Court decision."Mr brandt he need to determine if he need to re-interview A.L.and witness.. APPENDIX-I

7.January 10, 2018. Mr Brandt find that Mr Wallace performed an interview m. To A.L. the he no recorded and were no transcripts so such interview, an was no facts or evidence of rape, sexual abuse or assault in question. So Mr.Brand decide interview A.L.to understand the nature of her testimony.

8.January 24, 2018. Court Denied the Motion for interview A.L. APPENDIX-O

Was Mr. Wallace deficient and prejudicial by no recorded the interview he performed to A.L.?

Was these cause prejudice Mr. Brandt preparation to trial, because the trial Court denial him to interview A.L. ? see hear, Jan 24, 2018. **APPENDIX-Q**

Was Mr. Brandt deficient and prejudicial by no call first Md. Urology Dr. Clark to testify of Diagnosis and finding the exculpate and acquittal the defendant ?

Was a reasonable probability that if Md Urology have been testify the result of the proceeding would have been different ?

Furthermore the state claim the they did not have the medical records would also bolster such argument that counsel was not prepared for trial

#### ANALYSIS

"the availability of introduce post-trial performance or detailed guide lines for its evaluation..of counsel ineffectiveness challenges, id, at 674. to reconstruct the circumstances of counsel's conduct, and to evaluate the conduct from counsel perspective at the time." id, at 689. The petitioner may overcome this presumption "only" by demonstrating the identified acts or omissions, and ..demonstrate the this deficient prejudice its defense." Strickland v. Washington 466 U.S. at 687, 674, 687-93, (1984)., 18 USC §3006A (ABA), 4-3.9. "These are guidelines no merely as evidence of what reasonable diligent attorney would do. But are inexorable commands with which all defense counsel's must comply. (quoting Dickerson v. Bagley, 453, F.3d. 690, 693, (C A 6 2006)).

Under these Constitutional principles the performance of counsel's was deficient and prejudicial, Prongs of Strickland meet here, counsel's representation feel below objective standard of reasonableness, in light of a variety of circumstances faced by the defense counsel, and the range of legitimate decisions...at all points, judicial scrutiny of counsel performance must be highly deferential. The representation was Constitutionally ineffectiveness undermining the function of the process to denial the defendant a fair trial. when trial court conclusions are not supported by the record.

#### PLEADING

Respectfully Mr. Lopez ask for review whether claim was properly denied. and if find Constitutional right violation Lopez ask for relief of charges The R&R claim was exhausted. ECF, No. 9 at 9. Lopez timely file RCW. 10.73.090 Lopez show that under RCW 10.73.100(2)(4) except his grounds for time bar.

## GROUND TWO

The R&R in his second assignment of errors, Mr. Lopez claim the information was deficient under the Sixth Amend. because it lacked the specific material facts required to support every element of the offense charged. EFC No 1 at 33-34. He further complain that this, unlawfully denied him notice of the crime for which he was charged, and that the error was not harmless. id. at 34. The state Supreme Court Commissioner previously rejected this theory on the basis that petitioner failed to explain in precisely manner how the information was deficient adding i have review the information and adequately set the elements of charges offense." EFC No.2 at 62, Ex.12.

## INTRODUCTION

On April 18, 2017. Mr. Lopez, was charged by Detective Stephen Evitt with five counts of third degree, rape an child molestation, without probable cause warrantless arrest Mr. Lopez. APPENDIX: F 2.1.2.3.; APPENDIX- F

## ISSUES

- (1) Whether was the indictment of information comply with Constitutional requirements of the statutory law ?
- (2) whether Mr Lopez was convicted upon unconstititutional Due process of law?
- (3) Whether the state bears the burden to proof all the elements of crime beyond a reasonable doubt ?
- (4) Whether the charges document contained the elements of the crime charge is requires by the Constitutional Due Process of law ?
- (5) Whether the neutrality requirements to guarantee life, liberty, property will not be taken on the basis of an erroneous or distorted conception of the facts or the law without Due Process of law ?

## FACTS ESSENTIAL ELEMENTS IS REQUIRE

The essential elements rule is grounded in the Sixth Amend. of the U.S. Constitution. and Art 1 Sec 22. of the Wash. state Constitution. Amend. VI "In all criminal prosecution the accuse shall have the right to demand the and the cause of the accusation against him." see, CrR 2.1)(a)(1), State v. Sloan, 72, Wn. App. 407, 865, P.2d. 531, 1994, Lexis. 5, (Wash. Ct. App. 1994).

- (6) "All the elements of the crime must be include in a charging document in order to afford notice to an accused at the nature and cause of the accusation against him." U.S. v. Markee, 425, F.2d. 1943, 1047-48, (9th Cir. 1970), State v. Kjorsvik, 177, Wn.2d. 93, 97, 812, P.@d. 86, (1991), Potter v. United States, 155, U.S. 483-84, (1894), U.S. v. Marta, 482, F.2d. 1196, 1196-1200, (6th cir. 1973).

GROUND TWO...CONT

- (7)"An essential element" is one whose specification is necessary to establish the very legality of the behavior charge." State v. Wead, 148 Wn.2d.803,811,64,P.3d.640,(quoting, State v. Johnson, 199 Wn.2d.143,147,829,P.2d.1078,(1992)).
- (8)"Essential elements include only those facts that must be prove beyond a reasonable doubt to convict a defendant of the crime charged." State v. Powell,167,Wn.2d.672,683,P.3d.493,(2009).
- (9)"A charged document that does not articulate or make clear of all the elements of the crime which the defendadnt is charge violated the Due Process of law." State v. Walkawy,72,Wn.App.865,P.2d.531,1994, Wash. App.lexis 5.(Wash.Ct.1994).

After considering these mitigating factors that are sufficient to satisfy of what the document of charges may contained. The question arise that the document of charges contained all of essential elements of facts, that the state must prove beyond a reasonable doubt to convict the defendant of the crime charged,? when all the charged in the indictment are no supported by record..And it lack specificity under the Due Process Clause.

- (10)"In criminal prosecution the Due process Clause require to the State to proof every essential element of the crime beyond reasobale doubt. In re Winship, 497,U.S.358,361-64,90,S.Ct.1069,25,L.Ed.368,(1970).

"Implicitly in this priciples of requirements the jury instructions must list all the elements of the crime to be proof beyond reasonable doubt and to list all elements the would no permit a jury to convict a defendant beyond a reasonable doubt." In re Winship,397 at 358.

Secondary purpose for the "Essential elements Rule" is to "bar" any subsequent prosecution for the same offense.", State v. Nonog,169,Wn.2d.220,226,237,P.3d.250,(2010)(quoting State v. Leach,113,Wn.2d.679 782,P.2d.552,(1989)).

The information charges lacking the essential facts to Constitutionally is require by statute to inform the defendant is require.

- (11)"Every allegation in the indictment must be satiafy by proof. beyond a reasonable doubt." United States v. Carol,105 U.S.611,(1882)(emp add)
- (12)Fed R.Crim.P. 7(c)(1)"Required that an indictment be "plain concise an define of the "essential facts" Constitute the offense charged. and indictment should be read i its entirely construed according to common sense, an interpreted to include "facts" which are necessary implied." United States v. Given,767,F.2d.574,584,(9th Cir.(ciation omitted).

- (13) The U.S. Const. Amend. VI. "Make these right to know the nature and cause mandatory. "the indictment must contain "all" the "essential elements of the crime charged," and the facts" supporting the elements is require CrR 2.1.(a)(1), State v. Sloan, 149, Wn.2d.220,237, P.3d.172, 2009, Wash. App. Lexis.861, (Wash.Ct.2009).

#### SUPPORTING CASES.

- (14) In essence a "legally sufficient indictment "must state all elements with sufficient clarity to apprise a defendant of the charges against which he must defend and to enable to plead "double jeopardy." United States v. Rosi, 27 F.3d.409,415, (9th Cir.1994).
- (15) "A charge document that does not articulate or make clear all elements of the crime which the defendant is charge violate Due Process of law. State v. Wallway, 72, Wn.App.407,865, P.2d.531, 199, Wa. App. Lex.5, Wash. 2009
- (16) "The indictment by the grand jury has been regarded is the "epitome" of the Due process of law." Urtado v. People of California, 110 U.S.516, 522, 523, 4, S.Ct.111, 28, L. Ed.323, (1884) ("upon the presentment of the indictment of good and lawful is recognized by law is the Golden standard of Due Process against all other procedures are to compared."
- (17) Potter v. United States, 155, U.S.418, 444, (1894) ("no indictment is sufficient if it not alleged all ingredients the constitute the crime." where the language of the statute is according to the natural import of the words, fully described the offense, it is sufficient if the indictment follows the statutory phraseology, but where the elements to the crime were to ascertained by reference to the common law or to other statute. The essential facts necessary to bring the case within the statutory definition must be alleged. "every allegation made in the indictment might. it is said to be satisfied by proof." see, also United States v. Carll, 105, U.S.611, (1882).

#### CONCLUSION

Mr. Lopez, did not receive an adequate indictment is required by law, therefore the judgement and conviction entered without Due Process of law which the Constitutional rights and the equal protection rights forbids from depriving any person, life, liberty, or property without Due Process of law. U.S. Const Amend. IVX; also the R&R decision conflict state and Federal proceedings, an USC § R.10(A) Under these statutes of law Mr. Lopez is currently in custody in violation of the Constitution and laws of the United States, which is cognizable under a petition for COA pursuant 28 USC §2253(c)(1). a COA will be granted only if petitioner make a "substantial showing of denied of Constitutional rights. USC §2253(c)(2). (EDEPA). respectfully ask for relief.

### GROUND THREE

R&R Petitioner third Claim of errors That the prosecution violated his right to Due Process under Brady, 373 U.S.83,S.Ct.1194,(1963) By withholding exculpatory medical and DNA evidence from him prior to trial." EFC No.1 at 45.

#### STANDARD REVIEW

Brady v. Maryland,373,U.S.83,S.Ct.1194,10,L.Ed.215,(1963)(The prosecution have duty to disclosure evidence even without request.

- 1.the prosecution violated Mr.Lopez right of Due Process to a fair trial under Brady, by failing to turn over: (a)exculpatory eviden the tended to negated the elements of charges, like: (DNA TR.227,250. (Physical exam. Report TR.138-39. (Forensic test. TR.266). Strickler, U.S.at 263
- 2.all these factual material evidence that require by law was no provide to the defendant prior to trial. Was the prosecution violated Brady ?
- 3.The U.S. Supreme Court codified these rights:
  - (a)"the information or evidence that is favorable to criminal defendant and the prosecution fail to disclosed, and the prosecution withhold of such evidence "violate the right to Due process to a fair trial."Brady v. Maryland,373,U.S.83,S.Ct.1194,(1963).
  - (b)"The prosecution duty to disclosure Brady Material "whether or not the information is required by the defense."Pradis v. Arave,240,F.3d.1169,1176,(9th Cir.2001).
  - (c)Any scientific test or report would be needed by defendant sufficiently in advance to trail in often have reasonable opportunity to prepared a defense." RcR.7.24., State v.Knutson,121,Wn.2d.766,771,854,P.2d.617,(1993).; ABA Standard 3.8(d)(1984)., Fed.R.Civ.P.26.; \$4.7(a)(2) **EXHIBIT-2**

Was these factors relating to the extent of prejudice to the defendant? prejudice exist whether the prosecution have the facts or evidence before it relating to exculpatory evidence that is Constitutionally required to Disclose to the defendant. prejudicing the preparation to a fair trial.  
was The U.S. Supreme Court recognized that this treatment of prejudice exist in the circumstances when the Constitution require to disclose mitigating factors.?

PLEADING: For the foregoing reason Mr.lopez ask For relief. A Claim for relief is allegation of Constitutional violation." Closby v. Jones,960,F.2d.925,946,(11Th Cir.1992)(en banc).; Strickland. 466 U.S.668, at 674,(1984).

## GROUND FOUR

R&R Petitioner fourt and seven cause of action assert that the trial court infringed his right to confrontation, effective counsel, and Due Process, under the Fourth, Sixth, and Fourteenth Amendment by refusing replacemnet counsel to reinterview A.L. EFC No.1 at 37.

1. Mr Lopez did not receive effective assistance of counsel at trial. in Violation of the Sixth, Fourteenth Constitutional rights to Due Process of law, related to trail court interference with defense counsel ability to conduct proper confrontation and investigation of the case.

## STANDARD REVIEW

("His right to Confrontation") This simple sentence set forth a factual predicate with profound Constitutional implications which lead Petitioner to Respectfully ask these Honorable court for review these claim and to consider the rights guaranteed by the United States Constitution Amendment Sixth and Fourteenth, under tha laws of U.S.; & Wash.State Const.Art.1 & 22 18 USC §3006A., Fed.R.Crim.P.44., Strickland, 466 U.S. 668. at 674.(1984).

## 2.SUPPORTING FACTS

On January 10, 2018. Replacement Attorney TRAVIS BRANDT. After Spiking with Prior Attorney JEREMY WALLACE. Motion the court for interview A.L. based MOTION FOR INTERVIEW AND DECLARETION OF TRAVIS BRANDT

"Mr Wallace conduct an interview of A.L. is no recorded. no transcripts, no evidence to the allegation of rape, or sexual abuse, or assault. It is my practice to interview witnesses prior to trial.should the court compel me to go forward without the opportunity to interview A.L. to understand the nature of her testimony..i do not believe i can provide effective assit to Mr.Lopez. ~~APPENDIX-M~~ Petition for interview)

3. On January 18, 2018, Judge Ferrera add more charged based upon interview of A.L. whic the defendant have no record of such interview. TR.25.pg.10 also Hearing January 18, 2018. ~~APPENDIX-N~~

4. January 24, 2018. Judge Ferrera denied the Motion for interview. Tr.43 see also hearing January 24, 2018. ~~APPENDIX-O~~

Was: The court by denied the interview of the start witness would violated the Constitutional right to counsel and Due process of law.?

#### GROUND FOUR...CONT

In these case the trial court reasoning the unreasoning by deny interview of alleged victim and witnesses prior to trial.infringed a Constitutional rights to confrontation." Delaware v. Arsdall,475,U.S.673,679,S.Ct.1431, 89,L.Ed.674,(1986).

#### CONFLICTING CASES

- a)"the defendant right to compulsory process include a right to interview witnesses prior to trial." State v. Burri,87 Wn.2d.175,181,(1911).
- b)"The attorney for the defendant no only have right,but is his plain duty toward his client, to fully investigate the case, and to interview and examine as many as possible of the eye-witnesses to assault in question The defendant have the Constitutional right to either personally or by attorney to ascertain what their testimony will be...The state may not impede ..the defendant right to interview witnesses prior to trial. A defendant is denied his right to counsel...State v. Papa, 32, RI at 453, 459.180,(1911).
- c)"A defendant right to compulsory process is violated by prosecutorial inference with a defendant attempts to interview witness, necessary to prepared for defense." State v. Clark,53,Wn.App.120,(1988).

Here the denied for interview conflicting with the Ninth Circuit Court of Appeals decision, the court granted relief to state prisoners who were not allowed to interview witnesses;

- (1)Fowler v.Sacramento,Sheriff Dep't,421F.3d.1072,1035-38,(2005).
- (2)Holley v. Yarborough.421,F.3d.1091,1098-1101,(2005).

#### CONCLUSION

The U.S. Court of Appeals for the ninth Cir.is bound by Ninth precedents. the court decision conflict with the U.S.Supreme Court Authority. Fed.R. App.P.R.35(b)(A).,S.Ct.R.10(a)(b)., Miller-EI v. Cockrell.53,U.S.322,123, S.Ct.1029,(2003)("A prisoner seeking a (COA) need only demonstrate a substantial showing of the denial of a Constitutional right."

based on the foregoing, this court should grant the petition for writ of certiorari and order full briefing.

## GROUND FIVE

R&R, Ground Five Petitioner alleged that he receive ineffective assistance of counsel because, second attorney was unable to reinterview A.L. and indicated to the court he could no provide effective assistance of counsel to petitioner." EFC No.1 at 56,P.27.

### 1. STANDARD REVIEW

"A criminal defendant is guaranteed the right to efective assistance of by the Sixth Amendment to the U.S.Constitution. This Constitutional include the correlative right to representation free from any conflict of interest the undermine or affect counsel performance."

People v.Rice, (2017)4 Cal.5th 49,65,226,Cal Pdtr.3d.118,406,P.3d.788).  
Strickland v. Washington,466 U.S.at 668.,18 USC §3006A.

"Under our Federal court system both the Federal and the state court's are entrusted with the protection of the Constitutional righs."

EX Parte Royal, 117,U.S.241,6,S.Ct.734,740,29,L.Ed.868,(1886).

2.Mr.Lopez Claim The Sixth Amendment right to counsel was violated because trial counsel suffered from an actual conflict of interest after that Counsel inform the court the he cannot provide Constitutional effective assistance to his client. (1) the court fail to inquiry of potential conflict. (2)trial court compel counsel to labor upon conflcit. (3) fail to interview Government key witness. counsel was deficient and prejudicial to a fair trial, and fail below an objective standard of reasonableness.

3. The Court was inform of the potential conflict of interest.

Counsel stated:"he cannot effectively assist his client without frist interview A.L. and determine the nature of her testimony because there is no corroborating evidence to the assault or rape.(2)I have discussed with Mr Wallace the interview he conduct-with A.L. (3)the interview was no recorder.(4)was no transcript.(5)should the court compel me to go forward without the opportunity to interview A.L. I don't believe i can provide effective assistance to Mr.Lopez, at trial.

APPENDIX 3 (M) (motion for interview.; Fed.R.Civ.P.R.44(a)(b).

4. That facts underlying the claim. the trial court has the opportutity to to eliminate the potential conflict the affect counsel performance but the court fail to discharged its Constitutional duty and significant prejudice and affect counsel performance to a fair trail and ultimate denied the right to representation free from conflict.,§3006A

GROUND FIVE ...CONT

5. The conflict itself demonstrate a denial of the right to have assistance counsel.?

CONFLICTIN CASES

6. "Once a defendant has show that a conflict of interest actually affect the adequacy of his representation, he not have to prove prejudice in order to obtain relief."  
Cuyler v. Suvillian, 466 U.S. 335, 64, L. Ed. 2d. 333, 100, S. Ct. 1708, (1970).
7. McFarland v. Yuking, 356 F.3d. 688, 714, (6th Cir. 2004) (requiring a defendant go to trail with an attorney with a conflict of interest is contrary to to Federal law." Holloway v. Arkansas, 435, U.S. (infra)."
8. In re Richardson, 100, Wn. 2d. 669, 675, P. 2d. 209, (1983) ("If a conflict of interest existed and trial court failure to inquiry is automatic reversal."
9. Wood v. Georgia, 450, U.S. at 261. "In actual conflict of interest means precisely a conflict the affect counsel performance."
10. Garcia v. Bunnell, 33, F.3d. 1193, 1195, (9th Cir. 1994) ("the Sixth Amend. right to counsel requires effective assistance by and attorney which have two components. Competence and Conflict free representation."
11. Fed. R. Crim. P. R. 52(b) "A plain error that affect substantial rights may be considered even though it was not brought to thew court attention." The U.S. Supreme Court "The burden of establishing entitlement to relief for plain error is on the defendant to claiming it."  
United States v. Dominguez Benitez, 542 U.S. 74, 82, 124, S. Ct. 2333, 159 L. Ed 2d. 157. (2004)

CONCLUSION

12. The panel decision conflicts with of the United States Supreme Court and other circuits the have addressed these issue. see, S. Ct. R. 10(a) "Reasonable jurist would find the court assessment of Constitutional claim debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484, 120, S. Ct. 1595, 146, L. Ed. 542, (2000).; Miller-El v. Cockrell, 537, U.S. 322, 123, S. Ct. 1029, 1039, 154, L. Ed. 2d. 931, (2003).

The Ineffective Assistance of counsel issue discussed above is, at the vary least, debatable among jurist of reason, Lopez respectfully requested that these court grant a Certificate writ of certiorari on these claim..and be release from custody.

## GROUND SIX

R&R In ground six Petitioner allege that he receive ineffective assistance of counsel because his second attorney was unable to interview A.L. and indicated to the court that he not provide effective assistance of counsel to petitioner" ECF No.1 at 56.

## INTRODUCTION

Mr. Lopez counsel was ineffective representation in failing to conduct a reasonable pretrial investigation in violation of the Sixth and Fourteenth Amendment to the U.S. Constitution..Strickland 466,U.S.688,684-85,(1984). "a criminal defense counsel has the right, and duty to make a reasonable investigation."id.at 687-691.

## SUPPORTING FACTS

Note; Because was no fact or evidence of Rape,sexual abuse,assault, no DNA of A.L. allegations. make necessary for the defense counsel to move a motion for interview A.L. see, APPENDIX - M)(Motion for interview, The court denied the motion for interview A.L. APPENDIX - O)  
~~was the~~ denial of investigation of witnesses the prosecution violated the constitutional rights counsel under the U.S.Const. Amed. VI. & IVX.?

## CONFLICTING CASES

- (a)Under the Sixth Amendment a criminal defense counsel has a duty to make a reasonable investigation." Strickland v. Washington,466 U.S.at 687-91
- (b)"Failure to investgate "start witness" was deficient performance and suffer prejudice is a result."  
Howard v. Clark, 608 F.3d.563,671,(9th Cir.2010).
- (c)As a matter of substantive constitutional law,the state court's take action requirements reflect judicial recognition of the fact the most rights secure by the Constitution are protected against infringement by the Government." Lune v. Edmondson,Oil Co.457,U.S.922,936,102,S.Ct.2744 73,L.Ed.2d.482.(1982).

## CONCLUSION

Th U.S. Supreme Court has rule under(AEDPA)..§2254(d)(1)(2) limit relief for any claim decide in the state court proceedings. on violation of right based upon the foregoing, these court should grant to writ a certiorari in claim.

## GROUND SEVEN

R&R The state court Reasonable denied the Claim of ineffective assistance of counsel because Lopez Carrillo did not Show both Deficient representation and Prejudice. (Claims 4,5,6,7)see, APPENDIX.P. P.25.pg.2-2

## STANDARD REVIEW

"The right to assistance of counsel is a right to effective assistance of counsel." Strickland v. Washington, 466 U.S. at 686. (1984) U.S. Const. ~~AMED~~. VI

"Lawyer who fail adequately to investigate, and introduce evidence that demonstrate hid client innocence or that raise sufficient doubts as to question to undermine confidence in the verdict, render deficient performance." Reynoso v. Giurbino, 462 F.3d.1090, (9th Cir.2006) (citation omitted)

**MR. López, did not** Receive effective assistance of counsel as guaranteed by the Sixth Amendment to the United States constitution When defense counsel fail to present evidence of diagnosis of MD. Urology specialist about medical conditions the exculpate the defendant. see EXHIBITS. - 4

## SUPPORTING FACTS

1. MD Urology Diagnosis. Vacuums, Pumps, Devices, Surgery. EXHIBIT - 4
2. DR. BETHANY LYNN, "he suffer Ed since 2015, 2016, an clarify by MD. Urology on Nov. 28, 2017. see. TR. 258-59. EXHIBITS - 3
3. ETHAN SMITH Forensic. "No semen found in its testings." TR. 265, EX.
4. DETECTIVE STEPHEN EVITT. "Nothing was found." TR. 249-50. EXHIBIT. 2
5. FED. R. EVID. R. 702. "Required that court to "ensure that any an all" scientific testimony or evidence is not only relevant but reliable."
6. FED. R. EVID. R. 803. "The principle that oral testimony may be disregarded when is irreconcilable with the physical evidence in the case."

## ANALYSIS. AND PLEADING

Fail to call MD Urology TRAVIS CLARK. To testify of Diagnosis the exculpate the defenadt the result has been in aquittal in the case. it is no doubt if the jury hear MD. Clark diagnosis the result of the proceeding would have been different. By fail to call MD Urology is first witness, Mr Lopez deprived of his right to effective assistance, and Due Process rights, to a fair trail, and the basis right to be hear in his defense, it is beyond doubt and about all requirements of the law the Lopez was deprive of right Based upon the above these court shouls grant relief or writ of certiorari.

GROUND SEVEN...CONT SUPPORTING CASES

5. "The reasonableness of counsel actions is determine by considering the quantum of evidence at the time, and where the know to evidence would have lead a reasonable attorney to investigate further." Wigging, supra 539, U.S. at 527.; Frierson v. woodfard, 463, F.3d. 982, 989, (9th Cir. 2006).

6. Adams, 464, Pa. at 322-323, In a case where virtually the only issue is the credibility of the witness verse that of the defendant fail to explore all the alternatives available to ensure that the testimony of a know witness who might capable of casting shadow upon the witness...is ineffective assistance of counsel."

Here Adams case, is concepyually congruent to the present case, Lopez v. State, the trial counsel like the defense counsel in Adams had evidence readily available to him which he could "cast doubt upon A.L. testimony but he no call is witness Md Urology Dr. Travis Clark to testify.

7. "In re Lucas, 33 Cal. 4th 682, (9th Cir. 2003)" ("The California Supreme Court found that petitioner's trial counsel was ineffective for failing to introduce evidence that was "reliable and readily available" the court held that failure to do so was prejudicial."

Note, similarly in this case, the evidence that trail counsel neglected to was reliable and was in the trial counsel possession.

8. The Court always held that conclusory allegations without specific supporting facts have no probative value." Gordon v. Terry, 684, F.2d. 726, 744, (11Th Cir. 1982.; Twobly-Ashcroft v. Iqbal, 556 U.S. 662, 678, 129, S.Ct. 1937, 173, L.Ed. 2d. 868, (2009) ("Elements of cause of action supported by mere conclusory statements will not muster under Twoblit."

## GROUND EIGHT

R&R in his eight ground for relief Mr. Lopez, that his Due Process rights were violated by Judge Ferrera bias..by improper ex parte communication Judge Ferrera, reportedly with A.L.'s Father she recusal herself from case ECF No.10-2 at 6 (Ex.10).

## STANDARD REVIEW

- 1."the Fourteenth Amend. to United States Const.Establish a Constitutional Floor not uniform standard for judicial bias." Brady v.Grambley,520 U.S. 899,904,117.S.Ct.1793,138,L.Ed.2d.97,(1997).
- 2."No person shall be deprived of life,liberty,or property, without Due Process of law." U.S. Const. Amend. Fifth.
- 3.from these Fundamental principles, an accused has a Constitutional right to unbiased and impartial judge." United States v. Cooper.127.F.4th.1092

## FACTS ON RECORD

The Record show that Hon.Kristine Ferrera, been holding out-court meetings at her chamber's, spiking and vouching about the case, saying to Mr.Gilber Lerma, "that she will put Mr.Lopez, in prison for a long time." See,Report of April 25,2018.)(No laminated).;APPENDIX (P.) P.3:

- 4.The U.S. Supreme Court said: ;"A judge acting as one-person Grand Jury cannot be consistence with Due Process Clause of the Fourteenth Amend. ..Summary convicting a accuser in a secret hearing." In re Murchison, 349 U..S. at 133.

- 5."A private communication...between..witness are absolute forbidden invalidate the verdict." Mattox v. United States,146,U.S.at 140.; Armstrong 654.F.2d, at 1332.";Rodriguez, 125 F.3d, at 744.

Was.Under these statutes judge Ferrera, is found to be bias, and committed reversal error forbidding by law. the lead to a miscarriage of justice. ?  
was a violation of rights protected by the Constitutional an laws of U.S.  
to petitioner to unbiased judge guaranteed by the Fifth Amendment right ?

## PETITIONER RESPECTFULLY FOR PLAIN ERROR REVIEW

- 6."The U.S. Supreme Court made clear."The burden of establishing entitlement for relief for plain error is on the Petitioner claiming it." United States v. Dominguez-Benites,542,U.S.74,82,124,S.ct,2333,159,L.Ed 2d.157,(2004).
7. Fed.R. Cri.P.Rule.52(b) "Plain error that affect substantial rights maybe considered even though it was not brought to the court attention.

## 2. ISSUE OF ERROR

R&R...Judge FERRERA, Reportedly with A.L.Father she recusal herself from the case...ECF No.10-2 at 6. (Ex.10)

### STANDARD REVIEW

"A judge"may not" preside over "any"other judicial action with respect to it." Richard E. Falm. Judicial recusal and disqualification of judge §22.1 (1976).;Walker,60 M.J.at 358.;28 USC §455(a)(1)(2)(3)(4)(b)(1).

Record show in the STATE DOCKET. APPENDIX ~~R~~ pg.18-20. and CASE SUMMARY, ~~APP-5~~ it show the Judge Ferrera still in the case."

### 3.VOUCHING ERRORS

a)"Improper vouching in her Chamber violated the prestige of her Chamber by importing her personal opinion..

United States v. Avila-Colon,536,F.3d.1,25,(1st Cir.2015).

b)"vouching consisted in taking personal ownership of the case."

Vasques-Lirrauri, 178 F.3d.276,284,(1st Cir.2015).

c)"Vouching imparting personal bailiff to a witness."

United States v. Peres-Ruiz,353,F.3d.1,9,(1st Cir.2003).

### 4.JUDGE KRISTE FERRERA PRIOR BIAS ERRORS .See,EXHIBITS. H-7.(D-A & D-B).

(Mr Wallace imail" "i frequently disqualify Jedge Ferrra because Biased.

"Under the Doctrine of cumulative errors may reverse accused conviction."

Stae v. Lindsay,180 Wn.2d.443,326,P.3d.125,(2014)(alteration on original).

### CLOSING

"Clearly established Federal law as determine by the U.S. Supreme Court."

28 UCS §2254(d)(1)"recognized not only bias, but also the appearances of bias for judicial disqualification."

Was the court committed plain error ?

Was the Court violated the Constitutional right to Due Process ?

Was Judge Ferrera Committed a Constitutional impermissible bias ?

### PLEADING

Mr Lopez respectfully ask for the above reasons for relief of custody and all conviction reversed based upon Mr Lopez is imprisonment on violation his Constitutional and equal rights, and granted a writ of certiorari.

## GROUND NINE

R&R "We remove the Fourth Amendment Claim from the scope of habeas review by exclusionary rule." March 01, 2023. APPENDIX - ~~1~~ <sup>4</sup>; R&R.P.37.

### STANDARD REVIEW

a) "The United States Supreme Court Hold; "We unanimously upheld the practice that unless the statute is clearly unconstitutional an officer cannot be expected to question the judgement of legislation the passed the law."

b) Towers v. Janis, 428, U.S. 433, (1976) ("The purpose of the exclusionary rule of the United States Constitution Amend. Fourth is the preservation judicial integrity."

c) Towers v. City Of New York, 176 F.3d.136, 145, 9, 2d Cir. 1990) ("Conclude the Exclusionary rule does not apply to civil actions"

d) Under these Federal Authorities the R&R decision lead to unsound conclusions use the exclusionary rule conflicting with The U.S. Supreme Court Authority and others Circuits that have before addressed the issue S.Ct.R.10(a)(b)(c)., Fed.R.App.35(A)(B)

Under these Authorities the Act of Congress is draw inquestion §2403(a)

### 2. SECOND ISSUE FOR REVIEW

R&R "In the final claim petitioner assert that probable cause did not exit warrant for his arrest, the search his apartment, seizure, property, including balnkets, and couch cushions, which was latter DNA tested,"

EFC No.1.at 63., AUGUST 18, 2023. P.31., APPENDIX (B) (denying habeas corpus

### STANDARD REVIEW

"The Fourth Amendment to the United States constitution "Require that no warrant be issue but upon probable cause supported by oath or affirmantion and describing the place to be searched and the person or things seizure."

a) "the Fourth Amendment of the U.S. Constitution demand a factual showing sufficient to comprises probable cause, the assumption is that there will be truthful showing and so, if there were nothing more to consider it will follow that the veracity of a supporting affidavit could be tried on motion to suppress." United States v. Halsey, 257 F.Supp.1002., Franks v. Delaware, 438, U.S. at 154, (1978).

b) "The affidavit must demonstrate "nexus" to crime, an place to be searched an evidence found." U.S.v.Coleman, 923 F.3d.450, 457, (6th Cir.2004).; Illinois V. Gates, 46 U.S.213, 238-39, (1983).

GROUND NINE....CONT

c)"The magistrate must independently determine that probable cause exist after weighting the evidence supplied by the arresting officer."  
Whiteley v. Warden, 401, U.S. 560, 564, 91, S.Ct. 1031, 28, L.Ed. 2d. 306, (1971).,  
Giordenello v. United States, 357 U.S. 580, 487, S.Ct. (\*775) 1254, 2, L.Ed. 2d. 1503, (1958).; Act of June 15, 1917. Tilt. 40 Stat. 228. Sec. 11. "The proof of probable cause must be made before a search warrant may be issue must be of "facts" so closed related to the issue of the warrant is to satisfied finding of probable cause." see also Sec. 5., 6.

The Record show that Mr Evitt, is writing the search warrant at Mr. Lopez, apartment, after Mr. Evitt ~~charge & arrest~~ Police station, and put in jail.

d) see, TR. 221. pg. 20 "I was writing my search warrant.)

e) TR. 224. pg. 16-20. "at that time i got the search warrant)

The record show; Detective Stephen Evitt Testimony;

TR. 229., 249-250. "Nothing was found."

Testimony of ETHAN SMITH FORENSIC

TR. 272. pg. 18-19 "The testing did not support the present of semen on items."

ANALYSIS

A careful examination of the U.S. Supreme Court's Fourth Amendment reveals the standard cannot be anything less than probable cause. The arresting officer need a warrant and must be factual evidence linking to Lopez, arrest on evidence to be charge with it. Here Mr. Evitt fail below of the standard probable cause offending the U.S. Supreme Court.

That decision resulted an unreasonable application determine by the U.S. Supreme Court, resulted in unreasonable application determination contrary to the evidence presented at state court proceedings. §2254(a)(1)(2)

PLADING

The fact is that Mr Lopez was Arrest and charge with a crime put in jail by state Official, on Constitutional violation of rights of the Fourth and Fourteenth amendment and laws of the U.S. without probable cause. to arrest.

PLEADING

Respectfully Mr Lopez has demonstrate a "substantial showing of denial of Constitutional rights by being imprisonment on violation of rights protected by the U.S. Constitution. and Mr. Lopez ask for relief of custody.

GROUND NINE.....CONT

SUPPORTING CASES:

"The Fourth Amendment of the Constitution of the United States, does not bans on false arrest, false imprisonment, or seizure. U.S. Constitution Amendment Fourth. Torts have traditionally distinguished "a detention before the issuance of "legal process" and detention after it "any charge actually invoke by arresting officer at the time of the arrest, stated differently when faced with a claim for false arrest, we focus on the validity of the arrest, and not on the validity of each charges." Jaegly v. Couch, 439 F.3d.149,154(2th Cir.2006).

"At common law. the overlapping 'tort of false arrest false imprisonment, regulated a detention "without legal process." Wallace v. Kato, 549 U.S. at 389.(2007).; Manuel v. City of Joliet, 903 F.3d.667,(2018).

"Whether a reasonable well training officer would have know that probable cause, arrest and charges was illegal in light of all circumstances." Harring v. United States, 555 U.S.135,145,129.S.Ct.695,L.ed.2d.496,(2009).

STATEMENT OF THE CASE

Note;based upon the transcripts of case proceedings, reports in these case Citations and page number identify the issue without feather elaboration.

Jose Mario Lopez Carrillo, he live next door of Karen Lerma, and Gilbert Lerma, Sometime Her Daughter A.L.come to play with my granddauther TR.309 and the children next door. TR.311

After Mr.Lopez divorce, Karen lerma offer to rent upstairs of her home, which mR.lopez assepted. after Lopez move to the apartment sometimes Karen come to see Tv, and sometimes she sleep on Lopez bed.which was 9 by 10 ft. TR.325. with permission of Karen A.L. an Makia hans, spend the night at lopez aparment. TR.325.

On October 2015, Lopez contracted Ligionella, TR.316,319-20.351.EX.C-1to20 On December bowel broken some of colon was remove. TR 320,21. EXHIBIT=3

On April 18,2017. Lopez receive a phone call from Detective Stephen Evitt ask me to come to the police station he want to spike with lopez. at the Police station he tell me the he going to read my rights lopez said if you going to read me my rights a like to have a lawyer present, he said wait here about 30min latter Mr Evitt Come and charge Lopez with Five counts of child molestation on the third degree. see,APPENDIX C-2.1.2.3.) and was put lopez at grand County jail. on April 18,2017. CONT. NEXT PAGE

## REASONS FOR GRANTING THE WRIT

The following factors are all presented in this case;

1. Mr. Lopez did not receive Effective counsel's on violations of the Sixth Amendment to the U.S. Constitution. do to defficient and prejudicial representation. also the court decision conflict with S.CT.R.10(a)(b)(c)
2. Due Process violated do to prosecution fail to provide exculpatory evidence is required by law.
3. Fourth Amend, violation by false arrest and false inprisonment.
4. A.L. testimony, the she have servo sexual encounter on Lopez bed did not support by the record.
5. DR. BETHANY LYNN. "he suffer Ed. 2015,2016, and clarified by Md, Dr. Specialist Urology DR. TRAVIS CLARK. ON NOVEMBER 28,2017 prior to trial
6. STEPHEN EVITT Detective " Nothing was found." TR.249-250
7. ETHAN SMITH (Forensic) No semen was found, in bed items.Tr.227,262,271.

"The Court always held tha conclusory allegations without specific supporting facts have no probative value." Gordon v. Terry, 684 F.2d 726, 744 (11th Cir.1982).; Towbly-Ascroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed. 868, (2009) ("Elements of cause of action supported by mere conclusory statements will not muster under Twobly."

"Conclusory allegations without facts or evidence to support, are sufficient to warrant relief." Workman v. Bell, 178 F.3d 759, 771 (6th Cir.1998

## CONCLUSION

For the reason above the Petition for Writ a Certiorari should be Granted. The is a public importance require immediate attention 28 USC §2101(e).

Respectfully Submitted.



THIS DATE. JUNE 11.2025