

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN CIOTTA — PETITIONER
(Your Name)

vs.

K. HOLLAND — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT U.S. APPEALS COURT.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEVE CIOTTA

(Your Name)

C.D.C.#D-94599 ,P.O.BOX 8500.

(Address)

COALINGA, CA.93210.

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

(INTRODUCTION TO SET THE SCENE);

ISSUE ONE: TO ESTABLISH U.S. PRECEDENT AS TO WHETHER U.S. SUPREME COURT CASE LAW IN MARTINEZ V. RYAN[2012-U.S.-] ANNOUNCING NEW (BEDROCK) RULE, APPLYS RETROACTIVE ; ISSUE TWO: INFERIOR FEDERAL COURT DECREES CLEARLY CONFLICT WITH ESTABLISHED DIRECTIVES, DECISIONS IN U.S. SUPREME COURT PRECEDENTS CITED..S.CT.R.10,(a),(c)..

U.S.CONSTITUTION ART.3,SEC.2,CL.1..

(QUESTION ONE);

Is Granting certiorari warranted to resolve and ESTABLISH U.S. PRECEDENT addressing whether RETROACTIVE application applies to the NEW BEDROCK RULE announced in Martinez v. Ryan [2012-U.S.-], (EXCEPTION to address merits of certain claims DISPITE A.E.D.P.A. time-barr), BASED on Principles of BEDROCK PROCEDURES Established in Gideon v. Wainwright[1963-U.S.-], and Evitts v. Lucy [1984-U.S.-], applying under Teague v. Lane [1989-U.S.-] (SECOND EXCEPTION), *Holds; Retroactive application "permits" a "NEW rule" that implicates fundamental fairness, mandating central to accurate determination of guilt or innocence, and APPLYS RETROACTIVELY to cases that where FINAL,* *By REASONING that the Ninth Circuit U.S. appeals court DECLINES to address whether Marinez (exception) applies retroactively, Jones v. Ryan[9th Cir.2013],*

OR, To Remand do to inferior federal court decrees that CONFLICT with decision in Martinez (exception), because it was announced (PRIOR) to petitioners filing of a 28 U.S.C.2254 (habeas action) claiming CAUSE AND PREJUDICE for untimely filing his federal habeas action do to ineffective assistance of trial, and sentence counsel U.S.C.A.5,6, and 14 clauses, that where NOT addressed, with directions to address?

APPENDIX D, contains original claim of cause/prejudice facts, never addressed.

(QUESTION TWO);

INTRODUCTION: Inquire to (timely-file) legal document in D.C. Regarding its "significant-value" for relief, Per. (operation) of (inmate mail-box rule), U.S. Supreme Ct.R.29-2, established in U.S. PRECEDENT Houston v. Lack[1988-U.S.-], of which INFERIOR federal Cts. "Failed" to acknowledge its (existence) in F.R.Civ.P.60[b],[6] motion.

THERE-IN, based on the recognition inferior fed. Cts. "Fail to Honor" U.S. Supreme Ct.R.29-2, and Precedent cited establishing (inmate mail-box rule) which has been widely accepted in federal procedure to apply to petitions, amends, (motions), responsive documents, etc.

In that light, is granting certiorari warranted to Remand, or reverse orders because "Factually" the U.S. dist.Ct. "Overlooked" (sufficient) Real material in F.R.Civ.P.60 motion for relief supported by inmate (institutional) U.S. mail record containing dates, and addresses to D.C. PRIOR to D.C. final order, which where "never" received by D.C., "seeking to timely-file" under "operation of (rule)", a Crucial in "value" a legal document in D.C. in "context" of MOTION TO "WITHDRAWL" D.C. appointed counsel in habeas action, (28 U.S.C.1654), including leave to amend in "Pro-se", (STAUTORY RIGHT exists in fed. habeas to proceed in Pro-se, Johnson v. Patton[2014,C.A.10], Pa. v. Finley[1987-U.S.-] ?

(QUESTION THREE);

INTRODUCTION: Establishing authorization of F.R. Civ.P.60[b],[6] motion for relief to "Timely-file document" Per. (operation of inmate mail-box rule), and that it applies when court appointed agent abandon's client in fed. habeas action, or when a inferior federal court has abused its discretion.

Is granting certiorari warranted to remand, or reverse inferior fed, court orders, and establish that F.R. Civ.P.60 motion applies in certain conditions stated in above intro. , because it is a external to movants control over issues, recognized in Klapprott v. U.S.[1949] 335 U.S. 601, HELD:

"Extra^ordinary circumstances "means" Lack of Fault by movant, which "prevented" movant from "FULLY, AND FAIRLY" presenting case, and Gonzalez v. Crosby[2005-U.S.-], The U.S. Supreme court has recognized Rule 60 applies to habeas cases, (if it attacks Some DEFECT in the integrity of the habeas proceeding, it also is reviewable challenging only the statute of limitations for clear-error, which appears is NOW EXTENDED BY NEW RULE announced in Martinez v. Ryan [2012-U.S.-], stating when a cause and prejudice do to (I.A.C.) claim for untimely filing fed. habeas is present, the court shall address merit despite A.E.D.P.A. ?

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(QUESTION FOUR);

Is granting certiorari warranted do to the assertion that U.S. dist. Ct. Denial of prisoners motion requesting a STAY procedure for "Good-cause" on (pending) federal habeas action, Constitutes PALABLE ABUSE of discretion. Based on crucial relief sought in motion, (see below), and factor that it resulted in irreparable injury by violating movants federal rights, when court obtains power to order a Stay, Landis v. N. American Co. [1936] 299 U.S. 248; 57 S.Ct. 163,

" A federal court may STAY proceedings as part of its Inherent power to control the disposition of the cause on its docket, either with effort for itself, for counsel, or for litigant."

(NATURE OF STAYS VALUE);

Movant asserted he was (unable) to contact court appointed federal habeas counsel to discuss clients intentions to file a (amended) petition expanding facts for relief PRIOR to motion to dismiss, or answer, THERE-IN, seeking court to (INTERVENE) by contacting counsel, and instruct to contact client on matter soon as possible, so as client may (withdrawl) counsel to amend in "pro-se," if counsel declines to amend, (never receives U.S. mail to counsel by client) ?

QUESTION FIVE.

ABANDONMENT OF COURT APPOINTED AGENT
LITIGATING FOR CLIENT ESTABLISHING
CAUSE IN FAILURE TO FILE CERTIORARI
IN U.S. SUPREME COURT.

In accord to U.S. APPEALS COURT FOR
THE NINTH Circuit, (Cir. R.4-1(e)), Council in post-appeal
proceedings. Petitioner was Prevented from asserting NEW rule
in certiorari in Pro-se, because he relied on appointed
council.

Council abandoned client by NEVER notifying client
he intended to withdrawl, and failed to conduct MANDATORY
Duty to file a withdrawl motion in the 9th Cir. within 21 days
from the judgement.

See, Austin v. U.S.[1994] 513 U.S. 5.

Maples v. Tomas [2012-U.S.-]132 S.CT.912, RELIEF for
abandonment of state post conviction council.

Mackey v. Hoffman[9thCir.2012] 682 f.3d. 1247, RELIEF
for abandonment of agent in failing to file a notice of appeal.

Is above a "denial" of procedural due
process of law U.S.C.A. 14 "recognizing"
F.R.A.P. 47(a), 1, authority to grant certiorari
to vacate D.C. final judgement?

(QUESTION SIX):

FEDERAL JURISDICTION 28 U.S.C. (d), 1, 3, 6, 8.

Is Granting certiorari warranted on

Premises that inferior federal court

decrees are Silent, and CONFLICT with

U.S. PRECEDENT Williams v. Taylor (2000-U.S.)

established criteria applying federal jur-

isdiction under Title 28 U.S.C. 2254(d)(1).

Provision involving, "A state decision that

was a unreasonable application of

Clearly established decisions, directives, in

U.S. PRECEDENTS, stickland v. Wash. (1984-U.S.)

Rodriguez v. U.S. (1969-U.S.), and Anders v.

Cal. (1967-U.S.) (ALL EXISTING LAW at time

of sentence).

In that light, factually the D.C.

findings ONLY involve tolling issues, and

FAILED to continue, and address cause and pre-

Judice for procedural default (claim #2),

Requiring respondent to answer federal

USCA 5, 6, 14 violations, including Recognizing

a Significant factor exists that Cal.

rule that petitioner must justify any

QUESTION SIX ,CONT.

substantial delay is NOT sufficiently clear,
and consistently applied to create a federal
habeas barr, King v. Lamarque (9th Cir. 2006)

As such, the presumption of correctness
does NOT apply when NO state evidentiary
hearing is conducted, ONLY a Sua sponte
denial, citing a case that differs in subject
matter, as in present case.

In that light, 28 U.S.C. 2254(d)(3),
(6), and (8) applies, Constituting REMAND
for the state to prove a independent
procedural barr, On STANDPOINT Cal.
case law indicates otherwise. (see below),
THERE-IN, federal inquire must Analysis
Cal crim. habeas procedure which provides
remedies for federal Const. violations
under Cal. Const. Art. I, sec. 7 sec. 15
and also establishes a habeas petition
maybe (considered Timely) upon justifying
delay, stating justification maybe in
form of affected Substantial Const. rights,
In Re James (1952 Cal), OFFERED FOR

QUESTION SIX, Cont.

consideration, PERSUASIVE Authorities supporting relief, Wilkinson v. Cowan (7th Cir 2000) cert. denied 533 U.S. 928 (2001), HELD; "Prisoner did 'NOT' commit procedural default by 'failing' to file opposition to appointed counsel's withdraw brief, because he was 'NOT informed' by court, or attorney it was filed", (NEXT see), Cameron v. Lefevre (1995 E.D.N.Y), HELD; "State denial as 'untimely', federal court 'found timely', because state 'violated' procedural rule, causing delay by forwarding Record on Appeal to defendant '4yrs.' violating federal due process of law", (In present case, Cal. P.C. 1240.1 appointed counsel's DUTY to prepare a motion for appointment of counsel on appeal and file in court, violation), NEXT see, Lewis v. Johnson (3rd Cir 2004), "Federal court found 'Contrary to 28 U.S.C. 2254(d)(1)' factors, and 'Applied rule of existing at time of conviction' Rodriguez (1969-U.S.) 'Granting' condition federal habeas writ to restate timely direct appeal?"

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:

Cal. district attorney's
office,
300, S. Spring St. Suite
1702, Los angeles, Ca. 90013

Solicitor General of the united
states, Room 5614, Dept. of justice,
950 Pennsylvania Ave, N.W.,
Washington, D.C. 20530-001.

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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 A to the petition and is

☒ reported at Slack v. McDaniel (2009) 529 U.S. 484; 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 Gonzalez v. Crosby (2005) 545 U.S. 524; 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 NOT AVAILABLE.

☐ reported at In re Clark (1993) 5 Cal.4th 750; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Appeal court appears at Appendix _____ to the petition and is NOT AVAILABLE.

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

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
- <u>American Truckers Ass'ns. v. Frisco</u> <u>Transp. Co. (1958) 358 U.S. 133.</u>	
- <u>Anders v. Cal. (1967) 386</u> <u>U.S. 738; 87 S.Ct. 1396.</u>	(VII), (II), (IO)
- <u>Austin v. U.S. (1994) 513 U.S. 5.</u>	(VI)
- <u>Breier v. Northern Cal. Bowling Proprietors</u> <u>Asso. (1963 C.A. 9) 316 F.2d. 787</u>	15
- <u>Burns v. Morton (3rd Cir. 1998) 134 F.</u> <u>3d. 109.</u>	14
- <u>Cameron v. Lefevre</u> <u>(1995, E.D. N.Y.) 887 F. Supp. 425.</u>	(VII)
- <u>Douglas v. Cal. (1963) 372 U.S.</u> <u>353; 83 S.Ct. 814.</u>	
- <u>Douglas v. Noelle (C.A. 9, 2009)</u> <u>567 F. 3d. 1103.</u>	(18) (15)
- <u>Evitts v. Lucey (1985), 469 U.S. 387;</u> <u>105 S.Ct. 830.</u>	(II).
- <u>Faile v. Upjohn (C.A. 9, 1993)</u> <u>998 F. 2d. 985.</u>	(16), (18)

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335 U.S. 601.

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(1936) 299 U.S. 248; 57 S.Ct. 163

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359 F.3d. 646.

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Mackey v. Hoffman (9th Cir. 2012)

682 F.3d. 1247.

vi

Maples v. Tomas 2012-U.S.-)

132 S.Ct. 912

vi

Martinez v. Ryan (2012-U.S.-)

132 S.Ct. 1309.

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Morris v. U.S. (9th Cir. 2004)

368 F. 2d. 777.

15

Pa. v. Finley (1987) 481 U.S.

551; 107 S.Ct. 1990.

iii

Peterson v. Demskie (2nd Cir. 1997)

107 F. 3d. 92.

14

Rodriguez v. U.S. (1969)

395 U.S. 327.

(vii), (10)

Sonnier v. Johnson (5th Cir. 1998)

161 F. 3d. 945.

14

Strickland v. Wash. (1984)

466 U.S. 668; 104 S.Ct. 2052.

vii

Teague v. Lane (1989) 489

U.S. 288; 109 S.Ct. 1060.

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Welch v. U.S. (2016) 577

U.S. - ; 136 S.Ct. 1257.

Wilkinson v. Cowan (7th Cir. 2000) 231

F. 3d. 347; Cert. denied, 533 U.S. 928 (2001).

VII

William's v. Taylor (2000) 529

U.S. 362; 120 S.Ct. 1495.

VII

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2-23-18.

☐ 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 1-3-2013.
A copy of that decision appears at Appendix C.

☐ 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

U.S. CONST. AMDTS. 1, 5, 6, 8, and 14, SUBSTANTIAL DUE PROCESS OF LAW, LIBERTY INTERESTS, FUNDAMENTAL FAIRNESS, RIGHT TO A COURT OR JURY TRIAL, AND EFFECTIVE ASSISTANCE OF COUNSEL CLAUSES, ALSO SELF-INCRIMINATION. PROCEDURAL DUE PROCESS.

U.S. CONST. ART. 1, SEC. 10, CL. 1, ex post facto clause.

U.S. CONST. ART. 3, SEC. 2, CL. 1.

F.R.CIV.P. 15(a), AND 60(b). and 83.

TITLE 28 U.S.C. 1343 1651(a). 2283, 2242, 2243. 2254.

TITLE 28 U.S.C. 2244(d), (1), (B), STATUTORY, AND EQUITABLE TOLLING.

F.R. CRIM. P. 11.

U.S. CONST. ART. 1, SEC. 9, CL. 3..

U.S. BILL OF RIGHTS.

F.R. Crim. P. 6.

CAL. CONST. ART. 1, SEC. 1, TO 28. ART. 6, SEC. 6.

CAL. CODE OF CIV. P. 1085, AND 1094.5.

CAL. P.C. 13010, 13020, 1170, 190.2(a), 664, 187(a). 1367, 1368.1.

P.C. 1203 P.C. 1240.1 P.C. 1259

CAL. GOV. CODE 13967(a), SEC. 68505.

CAL PROPOSITION 8.

RETROACTIVE CASE LAW IN PEOPLE V. WILSON (1994) 21 C.A. 4th 885.

CAL P.C. 1192.6(b).

CAL. P.C. TITLE 3, CHAP. 1, ART. 1, TITLE 2.

Cal. C. Rule 10.1028(b). Permanent records:

(COMMENTARY);;

WEBSTERS ENGLISH VERSION DICTIONARY.

BLACKS LEGAL DICTIONARY..

All relevant codes, rules, clauses, Amdts.
Art. of Cal., and the U.S.

STATEMENT OF CASE

PART ONE:

(ORIGINAL 28 U.S.C. 2254, FACTS):

Petitioner filed a Title 28 U.S.C. 2254 (habeas action) in U.S. district court on date of 11-24-12, The court issued a (Order to show-cause), and appointed counsel, included a instruction to respondent, NOT to address a CAUSE and PREJUDICE for default in a Motion to dismiss, Rather respond in the answer, (See copy of order at APPENDIX, C).

Asserted inter-alia in petition, is a Claim two, contending CAUSE and PREJUDICE for Untimely filing 28 U.S.C. 2254 (habeas), do to Ineffective assistance of appointed trial / Sentencing counsel of right, violation of U.S.C.A., 6, 14, DEMONSTRATING Sufficient FACTS

STATEMENT, cont.

to ADHERE U.S. Supreme Court DIRECTIVE established in *Rodriguez v. U.S.* (1969-U.S.) and *Anders v. Cal.* (1967-U.S.), which federal courts are to Address merits DISPUTE A.E.D.R.A. (time-bar) established PRIOR to the filing date of present petition by NEW Rule Announced by U.S. Supreme court in *Martinez v. Ryan* (2012-U.S.) Rodriguez HONORS.

Upon showing sufficient facts that appointed Sentencing counsel rendered Prejudicially ineffective for failure to file a Notice of Appeal, consult with client concerning appeal, and that client did NOT consent to counsel NOT filing, Nor was it waived, (As present case), Petitioner shall be Accorded a Evidentiary hearing to Resolve matters to Reinststate a Timely direct Appeal,

STATEMENT OF CASE, CONT.

that includes Allegations that
counsel FAILED to file a Withdrawal
Brief, MANDATED in Anders v. Call (1967-U.S.)

(U.S. DISTRICT COURT DISPOSITION):

On date 6-17-14, the mag. recommendation,
and adopted finding, Denied under AEDPA,
Granting motion to dismiss as time-bar
per AEDPA, (NEVER ACKNOWLEDGE (CLAIM TWO) CAUSE AND
PREJUDICE, "NOTING" that order is SILENT
on merit to Actual Cause and
PREJUDICE claim present in petition, per.
Habeas R. 4, that should have
continued under Habeas (R. 5 Answer)
as stated. NO hearing held.
(APPEAL):
A Timely Notice of Appeal was
filed, and the U.S. Ninth Cir. Appeal
court denied C.O.A.

STATEMENT OF CASE, Cont.

PART TWO:

(SUBJECT); Filing a amended federal habeas action:

MEANWHILE,

As original fed. habeas action was (PENDING) prisoner filed a "critical" legal document in U.S. dist. court ENTITLED "MOTION TO WITHDRAW COURT appointed fed. habeas counsel" and to proceed in PRO-SE to amend action, (amends included), All by U.S. mail service.

Movant sent follow-up filing do to NO court Response, Final order was entered on original fed. habeas action on date 6-17-14, (NOTING) D.C. did NOT receive amends and sought relief Per. (OPERATION) "inmate mail-box rule" in Houston v. Lack (1988-U.S.-) to Permit a Timely filed motion (above) through F.R. Civ. P. 60 motion. [F.R. Civ. P. 15(a)].

STATEMENT OF CASE, Cont.

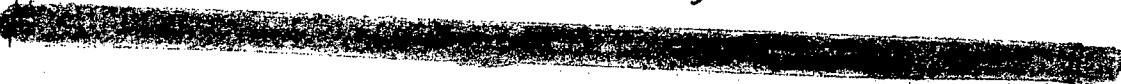
PART THREE;

(SUBJECT): MOTION FOR STAY OF FED HABEAS PENDING ACTION.

MEANWHILE,

Because NO response was being provided by D.C. to movant on issue to amend and withdraw counsel in (part two).

A secondary form of motion was filed by prisoner in D.C. entitled "Motion requesting STAY procedure" for Good-Cause" while fed. habeas was (pending), DENIED by D.C., resulting to irreparable injury, (see question # for context in good-cause).



PART FOUR:

(SUBJECT): F.R. Civ. P. 60, b, (6) motion for reconsideration

POINT ONE):

Prisoner sought F.R. Civ. P. 60, b, (6), to Vacate U.S. dist. Ct. final order Per. "OPERATION" of (inmate

(STATEMENT OF CASE, PART FOUR, POINT ONE, CONT.)..

mail-box rule) to permit a "TIMELY filed MOTION to WITHDRAW Appointed counsel" stated in (part-two) established in Houston v. Lack (1988-U.S.) HELD;

"A document is 'DEEMED' filed by a inmate on 'date' forwarded to institution mail staff."

Supported in appendix of F.R. 60 motion are "AFFIDAVITS (28 U.S.C. 1746) in form of institution U.S. mail record containing dates mailed, addressed to D.C. (PRIOR) to D.C. final order, see next pg., which where (NEVER) received by D.C.

Reasoning a "external" component to movant's control exists, inmate mail-box rule CANNOT properly FUNCTION without a fashioned remedy.

Conditions here apply to F.R. 60 in Persuasive Holding in Klapprott v. U.S. (1949-U.S.) "Exceptional circumstances in (b)(6) means" NOT "Fault" of movant, "PREVENTING" from "FULLY, and fairly" presenting case."

Mitchell v. McCaughtry (2003 E.D.) "Rule applies to MOTION for STAY." In Re Sims (6th Cir. 1997), Sonnier v. Johnson (5th Cir. 1998), Peterson v. Demski (2nd Cir. 1997), Burns v. Morton (3rd Cir. 1998), "Rule applies to habeas cases, amends included."

(See APPENDIX F, for affidavit).

POINTS IN LAW, AND FACT TO VACATE U.S.
DIST. COURT FINAL JUDGEMENT ORDER ENTERED ON 6-17-14..

(DOCUMENT ONE);
(TITLE 28 U.S.C.1746)..

Movant seeks a Evidentiary hearing to vacate
final judgement to PERMIT TIMELY Filing under TITLE 28
U.S.C.1746, Inmate mail box rule a DOCUMENT ENTITLED;

Urgent motion for LEAVE to file a amended petition
per. F.R.CIV.P.15(a), with amended petition, including
↓ WITHDRAWL OF COUNSEL with PROOF OF PRE-PAID U.S. Mail ser-
vice dates PRIOR to responsive pleading, or final judgement,
dates attached as APPENDIX(F). Institutional mail records.

" (SEE, HOUSTON V. LACK(1988)487 U.S. 266;108 S.CT. 2379,
a document is DEEMED FILED upon date delivered to institution-
al officer..

FACTS ON DOCUMENT.;

ON DATE OF 2-4-13 MOVANT SENT STATED DOCUMENT TO U.S.
DIST. COURT, AND FOLLOW-UP ON 2-6-14,
APPARENTLY NEVER RECIEVED BY U.S. DIST. COURT.

(RELEVANT CASES CITED IN SUPPORT OF;)

- - MITCHILL V. McCAUGHTRY(2003, E.D.WIS.) 291 F.SUPP.2D.823,
" HABEAS CORPUS FINAL ORDER VACATED ONDER 28 U.S.C.1746,
INMATE MAIL BOX RULE, PERMITTING TIMELY FILED AMENDS UNDER
F.R.CIV.P. 15(a)."
- - - DOUGLAS V. NOELLE 567 f. 3d.1103(9th cir.2009).
" INMATE MAIL BOX RULE APPLYS TO TIMELY FILE A 42 U.S.C.
1983 APPLICATION."
- - - MILES V. DEPT. OF ARMY(1989 C.A.9)881 F. 2D. 777,
" WHERE ONLY A MOTION TO DISMISS IS FILED,
MOVANT STILL HAS RIGHT TO AMEND,."
- - ALSO SEE; MORRIS V. U.S. (2004 C.A. 9)368 F. 2D.891,
" F.R.CIV.P.15(a), APPLYS TO A 28 U.S.C 2254 APPLICATION
WITH SAME FORCE AS CIVIL, 28 U.S.C 2242, HOLIDAY V. JOHNSON
(1941)313 U.S. 342.."
- - - BREIER V. NORTHERN CAL. BOWLING PROPRIETORS ASSO.
(1963 C.A.9) 316 f. 2d.787,
" FAILURE TO STATE A CLAIM UPON RELIEF COULD BE
GRANTED, (MOVANT STILL HAS RIGHT TO AMEND BEFORE RESPONSIVE
PLEADING).."

DOCUMENT TWO: →
(TITLE 28 U.S.C.1746).

TIMELY FILE DOCUMENT PER. TITLE 28 U.S.C.1746,
UNDER PRINCIPLES SET-FORTH IN HOUSTON V. LACK(1988) 487
U.S. 266(inmate mail-box rule),WITH PROOF OF PRE-PAID
U.S. INSTITUTION MAIL RECORD DATED (PRIOR) TO ANY
RESPONSIVE PLEADING. OR, FINAL JUDGEMENT ORDER ADDRESSED
TO AGENCY OF COURT APPOINTED COUNSEL.

(SEE COPY OF INSTITUTION MAIL RECORD DATES, AND
ADDRESS AT APPENDIX, F)..

(FACTS IN CONTROVERSY);

FORM OF DOCUMENT AT ISSUE IS ENTITLED;

" NOTICE TO COURT APPOINTED COUNSEL UNDER 18 U.S.C
3006A, HABEAS R. 8(c),

CLIENT REQUEST FOR COUNSEL TO FILE
A AMENDED PETITION TO EXPAND-FACTS FOR FEDERAL JURISDICTION
UNDER EX-POST-FACTO CLAUSE IN U.S. CONST., (PRIOR) TO A
RESPONSIVE PLEADING, OR FINAL JUDGEMENT ORDER ON ORIGINAL
PENDING PETITION IN U.S. DIST. COURT DOC.# CV-12-10593-
GHK-AS, AND TO RESPOND WITHIN A FIXED TIME BY CONTACTING
CLIENT REGARDING FACTS..

THE LEADING CASE IN AUTHORITY SUPPORTING
RELIEF IS FAILE V. UPJOHN 998 F.2D. 985(9th CIR. 1993),
1993 U.S. APP. LEXIS 4925.

IN FAILE, THE U.S. DIST. COURT VACATED FINAL
JUDGEMENT IN A (42 U.S.C. 1983) APPLICATION UNDER INMATE
MAIL BOX RULE IN REGARDS TO A COURT ORDER DIRECTING INMATE
TO SERVE DISCOVERY RESPONSES ON RESPONDENT, IN WHICH,
WHERE SUBMITTED TO PRISON AUTHORITYS BY INMATE FOR FORWARD-
ING TO PARTY BEING SERVED, THAT APPARENTLY WHERE (NEVER)
RECIEVED..

ASSERTING THIS LOGIC MAY APPLY TO PRESENT CASE BY
PERSPECTIVELY (SUBSTITUTING) THE (PARTY) IN THAT CASE
BEING SERVED, FOR,

THE (PARTY) COURT APPOINTED COUNSEL HERE,
AS AGENCY BEING SERVED..

DOCUMENT TWO, CONT.); _____ 7.

REASONING THAT FIVE SIGNIFICANT ELEMENTS
EXIST IN NEXUS OF FAILE TO SUBSTANTIATE THE IMPOSITION
THAT INMATE MAIL BOX RULE MUST APPLY TO THIS PARTICULAR
TYPE OF LEGAL DOCUMENT IN PRATICE GOVERNED BY REAL-
SUBSTANCE IN F.R. CIV.P., JUST AS IN FAILE..

(FIRST KEY)..

ASSERTING FACT THAT FAILE (CANNOT) ANSWER) IN COURT
ON DISCOVERY RESPONSES, WITHOUT FIRST BEING SERVED THE
DISCOVERY MATERIAL REQUIRED UNDER F.R. OF CIV. P..

(SECOND KEY)..

IN LIGHT OF ABOVE FACTOR, ALSO EXISTS THAT
FACTOR IN PRESENT CASE, (ONLY) EXPLORED IN ANOTHER FORM
OF LEGAL DOCUMENT HAVING THE SAME SIGNIFICANT WEIGHT,

BEING THAT A COURT APPOINTED COUNSEL (UNKNOWN)
OF CLIENTS DESIRE, OR ISSUES TO AMEND THE PENDING ORIGINAL
ACTION ASSIGNED TO,

(CANNOT) FILE A AMENDED PETITION WITHOUT BEING
SERVED BY CLIENT THE MATERIAL FACTS AT ISSUE TO AMEND,
WHICH CAN ONLY BE DONE THROUGH COUNSEL PER. F.R.CIV.P.83,
(local rules), AND (ONLY) CONTACT IS THROUGH U.S. MAIL..

(THIRD KEY)..

(AMPLIFYING FACTOR);

DO TO REAL SUBSTANCE IN F.R. CIV. P. 83(local rules),
A COURT RULE THAT GOVERNS FILING LEGAL DOCUMENTS
UNDER CONDITIONS WHEN A U.S. DIST. COURT APPOINTS COUNCEL
PER. 18 U.S.C. 3006A, HABEAS R. 8(c), (as in present case),

"ALL COMMUNICATION CONDUCTING BUSINESS IN LITIGATION
ON PETITION (MUST) ONLY BE THROUGH COUNCEL, INCLUDING
FILING AMENDS."

DOCUMENT TWO CONT.);
(FOURTH KEY)...

RECOGNIZING THE PRINCIPLES SET- FORTH IN
HOUSTON V. LACK (1988),
WHICH HOLDS THAT "ALL THE RATIONALES FOR APPLYING
THE MAIL BOX RULE TO PRISONERS NOTICE OF APPEAL,
(APPLYS EQUALLY), BECAUSE THE PRISONER WAS
UNABLE TO CONTROLL HIS LEGAL DOCUMENT ONCE DELIVERED TO
PRISON AUTHORITYS,"
AS APPLIED TO FAILE IN DISCOVERY
RESPONSES..

(FIFTH KEY)..

(IDENICAL FACTOR);

IMPLYING REALISTICALLY, IDENTICAL KEY ELEMENTS
EXIST BEING (PRIM PARTYS) IN CONDUCTING LITIGATION IN A
CIVIL ACTION,
AND THE PRINCIPLES THAT AMENDING IS A CRUCIAL
COMPONENT IN F.R. OF CIV.P. TO OBTAIN RELIEF SOUGHT HAVING
SIGNIFICANT WEIGHT THAT CAN ONLY BE DONE THROUGH COUNSEL.

WHEREFORE,

A EVIDENTIARY HEARING IS REQUESTED TO
EXPLORE AND RESOLVE ISSUES OF LAW, AND FACT AS TO WHETHER
THE MAIL BOX RULE PRINCIPLES APPLY TO THIS PARTICULAR
MATTER IN THE INTEREST OF FAIRNESS WHEN SIGNIFICANT
FACTORS EXIST, AND IN ESSENCE OF THE PHRASE (APPLYS-
EQUALLY) ASSERTED IN(MAIL BOX-RULE),THIS MATTER SHOULD
BE EXPLORED AND DECIDED BY A MAJORITY OF THE COURT WHEN
THAT RULE HAS BEEN (FACTUALLY) APPLIED (TO OTHER FORMS
OF LEGAL DOCUMENTS EQUALLY IN,

DOUGLAS V. NOELLE(9th cir.2009),

FAILE V. UPJOHN (9TH CIR.1993),

IN LIGHT OF THESE PARTICULAR (NEW) CIRCUMSTANCES
IN FORM INVOLVED, REGARDING QUESTIONS OF LAW, AND FACT,
HE ADMINISTRATION OF JUSTICE WOULD (NOT) BE SERVED BY
LEAVING MATTERS (UNRESOLVED) AT THIS JUNCTURE.

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(STATEMENT OF CASE, CONT.)

(POINT TWO): IN F.R.Civ.P 60 motion..

(CORRECTING JUDGEMENT OF MISTAKE):

(Noting, following is also present claim in Amends), also expanding jurisdiction criteria.

Asserted was U.S. district court MISTAKENLY (Overlooked) claim #2 in original federal habeas petition, (containing) allegations of CAUSE and PREJUDICE for Untimely filing 28 U.S.C. 2254 application do to (I.A.C.) Ineffective assist. of counsel of right U.S.C.A. 5, 6, 14, (Habeas R. 4 ERROR).

The court should have Stayed its decision on motion to dismiss, and "Continued" to address any "procedural default" as (Habeas R. 5 prescribes to Answer), EMPOWERED By New rule Obligation announced

STATEMENT OF CASE, CONT.

(POINT TWO IN FRCIV. P. 60 Motion, cont.)

by U.S. Supreme Court in Martinez v. Ryan (2012-U.S.) (BEDROCK PRINCIPLE),
"instructs federal courts are to
Address merits DISPITE A.E.D.P.A.
(time-barr) on "present" type claim."
(The effective date occurred
"PRIOR" to filing date of instant
petition).

(STATEMENT OF CASE, cont.).

(D.C. disposition order of F.R. Civ. P. 60 motion):

Court "FAILED" to "acknowledge" (inmate mail-box rule) claim, OR any other alleged claim.

Court appears to mis-
construe U.S. Supreme court's author-
ization applying F.R. Civ. P. 60 motion's
in Gonzalez v. Crosby (2005-U.S.);
(also is extended challenging limitation
statute, when a I.A.C. claim exists, to
con form with New rule in Martinez v. Ryan
(2012-U.S.:)).

A (SILENT) order, requires Remand, or reversal
to provide adequate decree, court ONLY states
issues are New, (which in procedure, is NOT
so).

A timely notice of appeal followed,
and C.O.A. is denied.

REASONS FOR GRANTING THE PETITION

In the interest of fairness,
liberty, procedural due process of law, comity, and to
possibly establish Precedent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

S. Cotta

Date: 3-14-18