

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Austin Billy Willis III — PETITIONER
(Your Name)

VS.

Heidi M. Lackner — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Austin Billy Willis III F-87769
(Your Name)
mule creek STATE PRISON
P. O. Box 409089
(Address)

IONE, CA. 95640
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1.) WHETHER THE NINTH CIRCUIT COURT OF APPEALS WAS REQUIRED BY 28 U.S.C. § 2253(c) TO ISSUE A CERTIFICATE OF APPEALABILITY BASED UPON PETITIONER DEMONSTRATING THAT JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OF BEING DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL WITHIN THE MEANING OF UNITED STATES V. CRONIN, 466 US 648 (1984), OR THAT JURISTS COULD CONCLUDE THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER? (SEE BUCK V. DAVIS, 137 S. CT. 759, 773 (2017); MILLER-EL V. COCKRELL, 537 US 322, 327 (2003); ACCORD BANKS V. DRETKE, 540 US. 668, 705 (2004).)

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:

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☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

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☒ is unpublished.

☐ For cases from **state courts**:

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

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☐ is unpublished.

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

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☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DECEMBER 18, 2017

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C § 2253(c)(2) PROVIDED THAT A CERTIFICATE OF APPEALABILITY MAY ISSUE "ONLY IF THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT."

STATEMENT OF THE CASE

PETITIONER HEREBY ALLEGES, CONTENTS, AND ARGUES THAT BY INCORPORATING THE DISTRICT COURT'S MEMORANDUM DECISION OF MAY 25, 2017, FOR CASE NO. 2:13-CV-01999-JKS, ATTACHED HERETO AS APPENDIX C, BY REFERENCE AS DULY SET FORTH HEREIN WILL ADEQUATELY EXPLAIN THE STATEMENT OF THE CASE.

REASONS FOR GRANTING THE PETITION.

PETITIONER HEREBY ALLEGES, CONTENTS, AND ARGUES THAT THE FOLLOWING REASONS DEMONSTRATES WHY THIS HONORABLE COURT SHOULD GRANT THIS PETITION FOR WRIT OF CERTIORARI.

IN ADDITION, PETITIONER HEREBY ALLEGES, CONTENTS, AND ARGUES THAT THE FOLLOWING REASONS SHOWS THAT THE NINTH CIRCUIT COURT OF APPEALS WAS REQUIRED BY 28 U.S.C. § 2253(C) TO ISSUE A CERTIFICATE OF APPEALABILITY (COA). FOR EXAMPLE, BUT NOT LIMITED TO, SUCH AS:

A. THE DISTRICT COURT FOUND FROM THE STATE RECORD THAT, AFTER TRIAL, PETITIONER REQUESTED, PURSUANT TO PEOPLE V. MARSDEN (1970) 2 CAL.3D 118, TO SUBSTITUTE COUNSEL BECAUSE TRIAL COUNSEL WAS

REASONS FOR GRANTING THE PETITION.

INEFFECTIVE FOR THE FOLLOWING REASONS:

1.) FAILED, OR REFUSED, TO CALL KEN A. AS A DEFENSE WITNESS (SEE APPENDIX C (APPX.) AT PP. 2);

2.) FAILED, OR REFUSED, TO CHALLENGE THE CHAIN OF CUSTODY REGARDING THE PROSECUTION'S EVIDENCE AGAINST PETITIONER, I.E., THE RENTAL VEHICLE. (IBID.)

3.) FAILED, OR REFUSED, TO FILE A MOTION TO SUPPRESS EVIDENCE (THE RENTAL VEHICLE), BASED UPON THE CHAIN OF CUSTODY OF THE RENTAL VEHICLE BEING BROKEN NUMEROUS TIMES. (ID.)

4.) FAILED, OR REFUSED, TO MAKE A MOTION TO DISMISS THE INFORMATION PURSUANT TO CALIFORNIA PENAL CODE § 995. (ID.)

5.) FAILED, OR REFUSED, TO MAKE A MOTION TO CHALLENGE THE PHOTOGRAPHIC LINEUP AS UNDUALLY SUGGESTIVE, UNRELIABLE, AND OBTAINED IN VIOLATION OF PETITIONER'S RIGHT TO COUNSEL. (ID.)

6.) FAILED, OR REFUSED, TO ADEQUATELY CONSULT WITH PETITIONER. (ID.)

7.) FAILED, OR REFUSED, TO MAKE A MOTION TO OBTAIN AN EXPERT WITNESS TO TESTIFY TO THE EFFECTS OF A PERSON BEING INTOXICATED. (ID.)

8.) FAILED, OR REFUSED, TO PREPARE A STRATEGY AND PRESENT A STRATEGY FOR A DEFENSE TO THE PROSECUTION CASE. (APPX. AT P. 2)

9.) FAILED, OR REFUSED, TO LET PETITIONER TESTIFY ON HIS OWN BEHALF TO PRESENT A DEFENSE TO THE



REASONS FOR GRANTING THE PETITION

PROSECUTION'S CASE. (ID.)

10.) THE TRIAL COURT DENIED PETITIONER'S REQUEST TO SUBSTITUTE COUNSEL. (ID.)

B. THE DISTRICT COURT FOUND THAT BECAUSE THE STATE COURT APPOINTED COUNSEL ON APPEAL FILED A BRIEF PURSUANT TO PEOPLE V. WENDE (1979) 600 P2d 1071, THAT PETITIONER SUBMITTED A SUPPLEMENTAL BRIEF ALLEGING THAT TRIAL COUNSEL WAS INEFFECTIVE FOR THE FOLLOWING REASONS:

11.) PETITIONER INCORPORATES THE FACTS OF THE FOREGOING PARAGRAPHS 1 TO 10 BY REFERENCE AS DULY SET FORTH HEREIN.

12.) FAILED, OR REFUSED, TO CALL KEN A. AS A DEFENSE WITNESS. (SEE APPX. C AT P. 3.)

13.) FAILED, OR REFUSED, TO CHALLENGE THE CHAIN OF CUSTODY REGARDING THE PROSECUTION'S EVIDENCE AGAINST PETITIONER, I. E., THE RENTAL VEHICLE. (IBID.)

14.) FAILED, OR REFUSED, TO FILE A MOTION TO SUPPRESS EVIDENCE (THE RENTAL VEHICLE), BASED UPON THE CHAIN OF CUSTODY OF THE RENTAL VEHICLE BEING BROKEN NUMEROUS TIMES. (ID.)

15.) FAILED, OR REFUSED, TO MAKE A MOTION TO DISMISS THE INFORMATION PURSUANT TO CALIFORNIA PENAL CODE § 995. (ID.)

16.) FAILED, OR REFUSED, TO MAKE A MOTION TO DISMISS

REASONS FOR GRANTING THE PETITION.

BASED UPON PETITIONER'S RIGHT TO A SPEEDY TRIAL WAS VIOLATED. (Id.)

17.) FAILED, OR REFUSED, TO MAKE A MOTION TO EXCLUDE THE IDENTIFICATION OF PETITIONER BASED ON FAULTY IDENTIFICATIONS AND TAINTED PHOTO LINEUPS. (Id.)

18.) FAILED, OR REFUSED, TO ADEQUATELY CONSULT WITH PETITIONER. (Id.)

19.) FAILED, OR REFUSED, TO EFFECTIVELY CROSS-EXAMINE THE PROSECUTION WITNESSES ON THEIR INCONSISTENT STATEMENTS. (Id.)

20.) THE STATE APPELLATE COURT REJECTED PETITIONER'S CLAIMS AND FOUND NO ARGUABLE LEGAL ISSUES THAT WERE ADEQUATE TO DESERVE ENCOURAGEMENT TO RECEIVE BRIEFING FOR THE COURT TO REVIEW AND AFFIRMED THE JUDGMENT. (Id.) THE CALIFORNIA SUPREME COURT DENIED REVIEW.

C. THE DISTRICT COURT FOUND FROM THE STATE HABEAS RECORD THAT PETITIONER COMPLAINED THAT:

21.) PETITIONER INCORPORATES THE FACTS OF PARAGRAPHS 1 TO 20 BY REFERENCE AS DULY SET FORTH HEREIN.

22.) THE PROSECUTION KNOWINGLY ELICITED FALSE EVIDENCE DURING THE PRELIMINARY HEARING. (SEE APPX. C AT P. 3.)



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23.) INSUFFICIENT EVIDENCE TO SUPPORT THE CONVICTIONS. (Ibid.)

24.) TRIAL COUNSEL WAS INEFFECTIVE FOR REASONS DESCRIBED IN THE ABOVE PARAGRAPHS 1 TO 19, AND/OR FOR REASONS DESCRIBED IN PETITIONER'S STATE HABEAS PETITION. (Id.)

25.) PETITIONER WAS DENIED HIS RIGHT TO TESTIFY ON HIS OWN BEHALF TO PRESENT A DEFENSE TO THE PROSECUTION'S CASE. (Id.)

26.) THE CALIFORNIA SUPERIOR COURT DENIED PETITIONER'S HABEAS PETITION IN A REASONED OPINION. THE CALIFORNIA COURT OF APPEALS AND THE CALIFORNIA SUPREME COURT DENIED PETITIONER'S STATE HABEAS PETITIONS. (Id. at pp. 3-4.)

D. THE DISTRICT COURT "ERRONEOUSLY FOUND" THAT PETITIONER ONLY PRESENTED THE FOLLOWING (4) FOUR CLAIMS FOR HABEAS CORPUS RELIEF.

27.) PETITIONER INCORPORATES THE FACTS OF PARAGRAPHS 1 TO 26 BY REFERENCE AS DULY SET FORTH HEREIN.

28.) THE PROSECUTOR COMMITTED MISCONDUCT BY ELICITING INCONSISTENT WITNESS TESTIMONY. (SEE APPENDIX C AT p. 4.)

29.) THE EVIDENCE PRESENTED WAS LEGALLY



REASONS FOR GRANTING THE PETITION.

INSUFFICIENT TO SUSTAIN PETITIONER'S CONVICTIONS.
(Ibid.)

30.) TRIAL COUNSEL WAS INEFFECTIVE FOR REASONS DESCRIBED IN THE ABOVE PARAGRAPHS 1 TO 19, AND/OR FOR REASONS DESCRIBED IN PETITIONER'S STATE HABEAS PETITION. (Id.)

31.) PETITIONER WAS DENIED HIS RIGHT TO TESTIFY ON HIS OWN BEHALF TO PRESENT A DEFENSE TO THE PROSECUTION'S CASE. (Id.)

E. PETITIONER DEMONSTRATED THAT JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OF BEING DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL WITHIN THE MEANING OF UNITED STATES V. CRONIC, 466 U.S. 648 (1984).

32.) PETITIONER INCORPORATES THE FACTS OF PARAGRAPHS 1 TO 31 BY REFERENCE AS DULY SET FORTH HEREIN.

33.) CONTRARY TO THE DISTRICT COURT'S "ERRONEOUS FINDING, PETITIONER EXHAUSTED AND PRESENTED THE FOLLOWING (8) EIGHT FEDERAL CONSTITUTIONAL CLAIMS TO THE DISTRICT COURT IN HIS FEDERAL HABEAS PETITION.

34.) IN THE INTEREST OF JUDICIAL ECONOMY, PETITIONER INCORPORATES HIS FEDERAL HABEAS PETITION ATTACHED HERETO AS APPENDIX D BY REFERENCE AS DULY SET FORTH HEREIN, AND SUMMARIZES HIS (8) EIGHT FEDERAL



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CONSTITUTIONAL CLAIMS, AS FOLLOWS, TO DEMONSTRATE THAT JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OF BEING DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL WITHIN THE MEANING OF UNITED STATES V. CRONIC, SUPRA, 466 US 648. (SEE APPX. D AT PP. 2-3.)

35.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT IN CLAIM ONE OF HIS FEDERAL HABEAS PETITION, HE ALLEGED THAT TRIAL COUNSEL ENTIRELY FAILED TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING, THAT THERE HAS BEEN A DENIAL OF PETITIONER'S SIXTH AMENDMENT RIGHTS THAT MAKES THE ADVERSARY PROCESS ITSELF PRESUMPTIVELY UNRELIABLE. (UNITED STATES V. CRONIC, SUPRA, 466 US AT 659; FLORIDA V. NIXON, 543 US 175, 190 (2004).)

36.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT HE DEMONSTRATED TRIAL COUNSEL ENTIRELY FAILED TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING BY TRIAL COUNSEL'S FAILURE, OR REFUSAL, TO MAKE THE NECESSARY TACTICAL DECISIONS, AS DESCRIBED IN PARAGRAPHS 1 TO 9, AND 16 TO 19, AND AS DESCRIBED IN PETITIONER'S FEDERAL HABEAS PETITION AT PAGES 8-10, 18-27, AS A REASONABLE COMPETENT ATTORNEY WOULD DO. (APPX. D AT PP. 8-10, 18-27.)

37.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT

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HE DEMONSTRATED JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OF BEING DENIED HIS SIXTH AMENDMENT RIGHTS TO COUNSEL WITHIN THE MEANING OF UNITED STATES V. CRONIC, SUPRA, 466 US 648. BECAUSE PETITIONER HAS DEMONSTRATED THAT TRIAL COUNSEL'S FAILURE WAS THE FUNCTIONAL EQUIVALENT OF A GUILTY PLEA. (SEE BELL V. CONE, 545 US 685, 696-697 (2002) (COUNSEL'S "FAILURE MUST BE COMPLETE").) THUS, THE NINTH CIRCUIT SHOULD HAVE ISSUED A COA. (28 USC § 2253(c)(2) (A COA MAY ISSUE "ONLY IF THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT."); BUCK V. DAVIS, SUPRA, 137 S Ct AT 773 (THE ONLY QUESTION IS WHETHER THE APPLICANT HAS SHOWN THAT "JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS..." (QUOTING MILLER-EL V. COCKRELL, SUPRA, 547 US AT 336)).) BECAUSE, THIS THRESHOLD QUESTION SHOULD BE DECIDED WITHOUT "FULL CONSIDERATION OF THE FACTUAL OR LEGAL BASES ADDUCED IN SUPPORT OF THE CLAIMS," (IBID.) THEN THE NINTH CIRCUIT

FOOTNOTE 1: THE NINTH CIRCUIT SHOULD HAVE ASSUMED PETITIONER'S ALLEGATIONS OF BEING DENIED HIS RIGHT TO COUNSEL WITHIN THE MEANING OF CRONIC AS TRUE WHEN DETERMINING TO ISSUE A COA. (SEE AGHCROFT V. IQBAL, 556 US 662, 678 (2009) ("A COMPLAINT MUST CONTAIN SUFFICIENT FACTUAL MATTER, ACCEPTED AS TRUE, TO STATE A CLAIM FOR RELIEF THAT IS PLAUSIBLE ON ITS FACE."))

REASONS FOR GRANTING THE PETITION

SHOULD HAVE ASKED "ONLY IF THE DISTRICT COURT" DECISION WAS DEBATABLE." (BUCK V. DAVIS, SUPRA, 137 SCT AT 774 (QUOTING MILLER-EL V. COCKRELL, SUPRA, 537 US AT 327).)

38.) IN ADDITION, PETITIONER ALLEGES, CONTENDS, AND ARGUES THAT HE DEMONSTRATED JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OF BEING DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY TRIAL COUNSEL FAILING, OR REFUSING, TO MAKE THE NECESSARY TACTICAL DECISIONS, AS DESCRIBED IN PARAGRAPHS 1 TO 9, AND 16 TO 19, AND AS DESCRIBED IN PETITIONER'S FEDERAL HABEAS PETITION AT PAGES 8-10, 18-27, AS A REASONABLE COMPETENT ATTORNEY WOULD DO. (APPX. D AT PP. 8-10, 18-27.)

39.) IN ADDITION, PETITIONER ALLEGES, CONTENDS, AND ARGUES THAT HE DEMONSTRATED JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS OF BEING DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY TRIAL COUNSEL FAILURE, OR REFUSAL, TO MAKE THE NECESSARY TACTICAL DECISIONS AS A REASONABLE COMPETENT ATTORNEY WOULD DO (SEE APPX. D AT 8-10, 18-27), BECAUSE, ABSENT OF ANY OR ALL THE ERRORS DESCRIBED IN PARAGRAPHS 1 TO 9, AND 16 TO 19, AND AS DESCRIBED IN PETITIONER'S FEDERAL HABEAS PETITION (APPX. D AT PP. 8-10, 18-27), THERE IS A REASONABLE

REASONS FOR GRANTING THE PETITION.

PROBABILITY THAT THE RESULT OF PETITIONER'S JURY TRIAL WOULD HAVE BEEN DIFFERENT. (STRICKLAND V. WASHINGTON, 466 U.S. 668, 694 (1984).) IN OTHER WORDS, A REASONABLE PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME OF PETITIONER'S JURY TRIAL. (IBID.; BUCK V. DAVIS, SUPRA, 137 S. CT AT 716 (DEFINING PREJUDICE AS A REASONABLE PROBABILITY THAT "AT LEAST ONE JUROR WOULD HAVE HARBORED A REASONABLE DOUBT".)) THUS, THE NINTH CIRCUIT SHOULD HAVE ISSUED A COA. (28 USC § 2253(C)(2) (A COA MAY ISSUE "ONLY IF THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT."); BUCK V. DAVIS, SUPRA, 137 S. CT AT 713 (THE ONLY QUESTION IS WHETHER THE APPLICANT HAS SHOWN THAT "JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS..." (QUOTING MILLER-EL V. COCKRELL, SUPRA, 537 US AT 336)).) BECAUSE "[A] CLAIM CAN BE DEBATABLE EVEN THOUGH EVERY JURIST OF REASON MIGHT AGREE, AFTER THE COA HAS BEEN GRANTED AND THE CASE HAS RECEIVED FULL CONSIDERATION, THAT PETITIONER WILL NOT PREVAIL." (BUCK V. DAVIS, SUPRA, 137 S. CT AT 714 (QUOTING MILLER-EL V. COCKRELL, SUPRA, 537 US AT 338).) AND THE ONLY QUESTION BEFORE THE NINTH CIRCUIT WAS WHETHER "THE DISTRICT COURT'S" DECISION WAS DEBATABLE." (BUCK V. DAVIS, SUPRA, 137 S. CT AT 714 (QUOTING MILLER-EL V. COCKRELL, SUPRA, 537 US AT 327)).



REASONS FOR GRANTING THE PETITION.

40.) THEREFORE, BASED UPON THE FOREGOING REASONS, THE NINTH CIRCUIT SHOULD HAVE ISSUED A COA ON PETITIONER'S CONSTITUTIONAL CLAIMS OF BEING DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL. BECAUSE PETITIONER'S CLAIM IS REASONABLY DEBATABLE WITHIN THE MEANING OF 28 USC § 2253(c)(2). (SEE SLACK V. M'DANIEL, 529 US 473, 484 (2003) (EXPLAINING THAT A COA SHOULD BE ISSUED WHEN "JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE PETITION STATES A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS" RESOLUTION OF PETITIONER'S CLAIM).)

CLAIM TWO:

41.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT IN CLAIM TWO OF HIS FEDERAL HABEAS PETITION, HE ALLEGED INTER ALIA THAT HIS CONVICTION WAS THE RESULT OF PROSECUTORIAL MISCONDUCT BY THE PROSECUTOR ALLOWING FALSE EVIDENCE GOING TO THE JURY UN-CORRECTED. (APPX. D AT PP. 3, 22-24, 31.)

42.) CONTRARY TO THE DISTRICT COURT'S ERRONEOUS FINDING, PETITIONER EXHAUSTED AND PRESENTED CLAIM TWO TO THE DISTRICT COURT IN HIS FEDERAL HABEAS PETITION. (APPX. D AT PP. 3, 22-24, 31.) BECAUSE, PETITIONER'S "SHORT AND PLAIN STATEMENT," AS REQUIRED BY RULE 8(a)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE, SHOWS,



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ASSUMING PETITIONER'S ALLEGATIONS AS TRUE, THAT HE IS ENTITLED TO RELIEF FOR BEING DENIED HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND FAIR TRIAL. (SEE ASHCROFT V. IQBAL, SUPRA, 556 US AT 678 ("A COMPLAINT MUST CONTAIN SUFFICIENT FACTUAL MATTER, ACCEPTED AS TRUE, TO STATE A CLAIM FOR RELIEF THAT IS PLAUSIBLE ON ITS FACE."); SEE ALSO SWIEKIEWICZ V. SOREMA N.A. 534 U.S. 506, 510-511 (2002) (FINDING THAT A PRIMA FACIE CASE IS AN EVIDENTIARY STANDARD, NOT A PLEADING REQUIREMENT).)

43.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT HE DEMONSTRATED JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIM THAT HE WAS DENIED DUE PROCESS AND FAIR TRIAL BY THE PROSECUTOR'S MISCONDUCT OF ALLOWING FALSE EVIDENCE GOING TO THE JURY UNCORRECTED. (APPX. D AT PP. 3, 22-24, 31.) THUS, THE NINTH CIRCUIT SHOULD HAVE ISSUED A COA. (28 U.S.C. § 2257(c)(2) (A COA MAY ISSUE "ONLY IF THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT."); BUCK V. DAVIS, SUPRA, 137 S. CT. AT 113 (THE ONLY QUESTION IS WHETHER THE APPLICANT HAS SHOWN THAT "JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS..." (QUOTING MILLER-EI



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V. COCKRELL, SUPRA, 937 U.S. AT 336).) BECAUSE "THE DISTRICT COURT" DECISION WAS DEBATABLE" (BUCK V. DAVIS, SUPRA, 137 S.Ct. AT 774 (QUOTING MILLER-EL V. COCKRELL, SUPRA, 937 U.S. AT 327)), WHETHER OR NOT THE PROSECUTOR ALLOWING FALSE EVIDENCE TO GO TO THE JURY UNCORRECTED RESULTED IN PETITIONER BEING DENIED DUE PROCESS AND FAIR TRIAL. (SEE APPX C AT PP. 6-9; SEE ALSO APPX. D AT PP. 3, 22-24, 31.) CLAIM THREE.

44.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT IN CLAIM THREE OF HIS FEDERAL HABEAS PETITION, HE ALLEGED INTER ALIA THAT HIS CONVICTION WAS BASED ON LESS THAN PROOF BEYOND A REASONABLE DOUBT OF EACH AND EVERY ELEMENT OF THE CHARGED CRIME IN VIOLATION OF THE DUE PROCESS CLAUSE AND IN RE WINSHIP, 397 U.S. 498 (1970). (APPX. D AT PP. 3, 24, 28-37.)

CLAIMS FOUR, FIVE, SIX, SEVEN, AND EIGHT.

45.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT CLAIMS THREE, FOUR, FIVE, SIX, SEVEN, AND EIGHT ARE BASED ON THE FACTUAL MATTERS DESCRIBED IN HIS FEDERAL HABEAS PETITION THAT ENTITLES HIM TO HABEAS CORPUS RELIEF ON ANY, OR ALL, OF HIS CONSTITUTIONAL CLAIMS. (APPX. D AT PP. 3-4, 11-17, 28-37.)



REASONS FOR GRANTING THE PETITION.

46.) PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT HE DEMONSTRATED JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT'S RESOLUTION OF HIS CONSTITUTIONAL CLAIMS, DESCRIBED IN CLAIMS THREE, FOUR, FIVE, SIX, SEVEN, AND EIGHT. (APPX. C AT PP. 9-14, 15-18; APPX. D AT PP. 3-4, 24, 11-17, 28-37.) BECAUSE, PETITIONER'S FEDERAL HABEAS PETITION CONTAINS SUFFICIENT FACTUAL MATTER, ACCEPTED AS TRUE, TO STATE A CLAIM(S) FOR HABEAS CORPUS RELIEF THAT IS PLAUSIBLE ON ITS FACE. (ASHCROFT V. IQBAL, SUPRA, 556 US AT 678.) THUS, BECAUSE EACH AND EVERY CLAIM IS REASONABLY DEBATABLE WITHIN THE MEANING OF 28 USC § 2253(C)(2), THE NINTH CIRCUIT SHOULD HAVE ISSUED A COA ON ANY, OR ALL OF, PETITIONER'S CONSTITUTIONAL CLAIMS OF BEING DENIED HIS FEDERALLY PROTECTED RIGHTS. (SEE SLACK V. MCDANIEL, SUPRA, 529 US. AT 484 (EXPLAINING THAT A COA SHOULD BE ISSUED WHEN "JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE PETITION STATES A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS" RESOLUTION OF PETITIONER'S CONSTITUTIONAL CLAIMS).) IN OTHER WORDS, THE ONLY QUESTION BEFORE THE NINTH CIRCUIT WHEN IT DETERMINED WHETHER OR NOT TO ISSUE A COA



REASONS FOR GRANTING THE PETITION

ON EACH, OR ALL, OF PETITIONER'S CONSTITUTIONAL CLAIMS WAS WHETHER "THE DISTRICT COURT" DECISION WAS DEBATABLE." (BUCK V. DAVIS, SUPRA, 137 S. CT AT 114 (QUOTING MILLER-EL V. COCKRELL, SUPRA, 437 US AT 327)).) NOT WHETHER OR NOT PETITIONER WOULD PREVAIL ON APPEAL. (ID. AT 336-337.)

47.) FURTHERMORE, BASED UPON THE FOREGOING REASONS DEMONSTRATING THE DISTRICT COURT'S DECISION WAS DEBATABLE, THEN THE NINTH CIRCUIT SHOULD HAVE ISSUED A COA, BECAUSE PETITIONER'S CLAIMS ON APPEAL WOULD "DESERVE ENCOURAGEMENT TO PROCEED FURTHER." (LAMBRIGHT V. STEWART, 220 F3D 1022, 1029 (9TH CIR. 2000) (QUOTING BAREFOOT V. ESTELLE, 463 US 880, 893 (1983)); ACCORD BUCK V. DAVIS, SUPRA, 137 S. CT AT 117 (CITATION AND QUOTES OMITTED).)

CONCLUSION.

THEREFORE, BASED UPON THE FOREGOING REASONS, PETITIONER RESPECTFULLY PRAYS TO THIS HONORABLE COURT TO GRANT THE PETITION FOR A WRIT OF CERTIORARI.

Respectfully Submitted
x Austin Willis

MARCH 14TH, 2018