

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHUN HEI LAM — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States District Court for the Middle District of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHUN HEI LAM-# 50437-018

(Your Name)

FCI SAFFORD, P.O. BOX 9000

(Address)

Safford, Arizona-85548

(City, State, Zip Code)

(Phone Number)

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:

QUESTION(S) PRESENTED

QUESTION ONE;

Did the District Court Error in Declining to Order an Evidentiary Hearing in a Proceeding Pursuant to 28 U.S.C. § 2255 in a Case Where Duelling Affidavits Controverted Facts to Which both Agreed That a Third Party 'Interpreter' was the Linchpin as such was the Translator between a Non-English Speaking Hong Kong National and an attorney who Did Not Speak Cantonese During the 'Plea Negotiations Process' ?

QUESTION TWO;

When is it 'Required' to Hold an Evidentiary Hearing in a Proceeding Pursuant to 28-U.S.C. § 2255(b) When Contested allegations of Fact exist in Sworn Testimony, in a 'He said She Said battle' in a Claim of Ineffective Assistance of Counsel During the Plea Negotiations Process as to this Court's decisions in *Lafler V. Cooper*, and *Missouri V. Frye* ?

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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 B to the petition and is

☐ reported at UNPUBLISHED; or,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☒ is unpublished.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 E to the petition and is

☐ reported at 8:13-cv-00518-JDW-MAP, USDC MD Fla.; 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☒ is unpublished.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 Nov. 14, 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: January 29, 2018, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

CONSTITUTIONAL PROVISION:

Article in amendment VI, of the Constitution for the United States

(" The Sixth Amendment right to the Assistance of Counsel ")

(See Appx. I)

STATUTORY PROVISIONS:

28 U.S.C. § 2255(b)

("Evidentiary hearing in a Section 2255 Proceeding ")

(See Appx. J)

STATEMENT OF THE CASE

CHUN HEI LAM, (hereinafter referred to as "Petitioner") presents this petition for certiorari to this Honorable Supreme Court of the United States as to the denial of a post-conviction prosecution pursuant to 28 U.S.C. § 2255 for the violation of rights guaranteed, by and through the Constitution of the United States at Article in amendment VI. (The Sixth Amendment Right to the "[effective]-Assistance of Counsel.")

This as to the "erroneous advice" by trial counsel to reject a ten-year plea agreement and proceed to trial by jury to where [he] was convicted and thereafter, sentenced to a term of imprisonment of 25 years.

As the facts presented herein, and in the lower Circuit and District Courts establish that, extraordinarily, Petitioner, as a "Hong Hong National" to whom never once stepped foot in the United States, and did not speak an iota of English was fished out of International waters by the U.S. Coast Guard and sequestered by such.

[He] was thereafter, taken into the United States in the Middle District of Florida to be prosecuted under United States' Controlled Substance Offenses along with other compatriots aboard the Tam Fuk Yuk and taken through the United States' criminal justice system for prosecution.

Against this backdrop, at all times thereafter, the attorney that was subsequently appointed to "assist" the Petitioner was accompanied (necessarily so) by a "Cantonese interpreter" and virtually every interaction therewith was presented through such.

Through this "interpreter," Petitioner, as a foreign National was oblivious to the United States' Constitution, laws and procedures, and therewith was consistently told that " [he] had a good chance of winning at trial by jury,"- and " [if] he won, he could go home to his country."

Ultimately, Petitioner was advised through this interpreter that, " you are-going to trial,' all of your co-defendants are,' so are you."

Under these premise, Petitioner proceeded to trial by jury having been taken out of the Boat he was operating to which carried 2,900 kilograms of cocaine and was declared "Stateless" by the Coast Guard.

Petitioner essentially had no idea he had any say so in the matter, and as the result of this "advice," Petitioner was unwittingly allowed to proceed to a "suicide trial" where he was found guilty and sentenced to 300 months (25 years) imprisonment as opposed to the 10 years (or otherwise plea of guilt) that he has now served as the result.

Thereto, having been taken through the appeals process to which contested the United States' jurisdiction in the matter, See United States V. Lam, 430 - F. App'x 794 (11th Cir. 2011); see also Appx.-H) Petitioner (through the assistance of fellow prisoners) placed a petition before the District Court for the violations of the effective assistance of counsel in the section 2255 presentment.

Primarily as to the Eleventh Circuit's later decision in United States-V. Bellaizac-Hurtado, 700 F. 3d. 1245 (11th Cir. 2012) again challenging the subject matter jurisdiction of the court. Also, as to the allegedly, newly discovered evidence regarding the Statelessness of the vessle to which Petitioner was operating.

Pertinent to this petition for certiorari, and most significant was the claim of...

Cont'd

Continued from page

"Counsel rendered ineffective assistance of counsel, in violation of rights guaranteed through Article in Amendment VI. ("The Sixth Amendment") during the plea negotiation process." (See *Chun Hei Lam V. United States*, No.-8:13-cv-518-T-27/MAP, U.S. District Court for the Middle District of Florida (2/17-16) (See also Appx. E Order of Denial Civ. Doc. # 12)

This with the above mentioned factual basis regarding the "interpretation" from the Cantonese interpreter. (Civ. Doc. # 1, at 7)

The government responded by denying the fact that a "plea agreement was - ever offered..." (Civ. Doc. # 4, at 13) In support thereof, the government was able and did acquire a sworn affidavit from Defense counsel (trial) **Lori D. - Palmieri.** (Id. Att. 4)

This defense Attorney's affidavit stated in pertinent part:

[Mr. Lam] was not offered, nor did he reject a ten year offer to plead guilty. It simply did not happen and is easily confirmed through Ms. Christina Ling who was present at all meetings with [Mr.Lam] as interpreter. Likewise Mr. Ruddy, the Assistant United States Attorney will confirm that there was never any such offer conveyed to counsel to communicate to Lam.

Through Cantonese interpreter Mr. Lam was presented with the options of entering a guilty plea or without a plea agreement or proceed to jury trial. He could enter a guilty plea and either cooperate with the government or not.

"At all times during my representation of Mr. Lam he asserted his innocence and his desire to proceed to trial regardless of any of his co-defendants went to trial or not. His decision to go to trial and testify on his own behalf was his own after consultation with counsel.

"Mr. Lam never requested a plea agreement from the government nor expressed a desire to cooperate with the government in it's prosecution of named co-defendants or others. He likewise never expressed a desire to enter an open guilty plea."

"it was not until after the receipt of the draft pre-sentence Report prior to sentencing that Mr. Lam admitted his guilt and wanted to express remorse at sentencing."

As such, the government stated that, **"Lam has completely misstated the facts...and the claim is without merit."** (Id. 14, Att. 4, at 3-4)

It therewith argued, without pointing to any reasoning "Lam has not established any basis for an evidentiary hearing because the issues he raises lack merit." (id. 18)

On 1-21-2016, recognizing the **"factual dispute"** that was developing in regards to **Ground Three** as to the "Attorney's affidavit," the District Court made a preliminary order directing that [Petitioner] respond with a "Sworn Statement" to assist the court in "determining whether an evidentiary hearing was - was required." (Civ. Doc. # 8, pg. 1-2)

This by citing that the original declaration submitted by Petitioner was not "Sworn under the penalty of perjury." (id. at 2, n.1)

Due to complications with the mailing, as Petitioner is a "pro se prisoner" [he] petitioned and was able to file said **"Sworn statement"** (out of time) by order of the court. (Doc. #'s 9, 10, and 11)

On 2-17-2016, the District Court issued it's order in the matter denying the section 2255 presentment. (See Id. Doc. # 12)

Pertinent to this Petitioner for certiorari, at **Ground Three**, the court did in fact acknowledge the **"factual dispute in the sworn testimony."** (Id., pgs= 5-6)

"[Petitioner] contends that counsel conveyed to him that "the government-offered a plea agreement which carried a binding ten year sentence." (Citing - Doc. # 1, pg. 34) He further contends that although he initially decided to accept the plea, "he rejected it a few days later after counsel told him that she had a discussion with all [Petitioner's] co-defendants' attorneys, who all [] agreed that there was a very good chance in prevailing at trial and that all Defendants should proceed together. (id.)

In response to [Petitioners] contention, former defense counsel attests that [Petitioner] " was not offered, nor did he reject a 10 year plea of guilty." (Cr. Doc. # 4-4 at pg. 3) In it's response, the government asserts that it never offered [Lam] a plea agreement..." (Cr. Doc. # 4 at pg. 13)

In reply, [Petitioner] continued to maintain that former defense counsel advised him of a ten year plea offer if he entered a plea of guilty," and that he would have accepted the offer but for counsel advising him "to go to trial 'with all of the other co-defendants' instead of accepting the ten year offer." (CV. Doc. # 9, pg. 4)

The District Court, after acknowledging that Hill V. Lockhart, 474 U.S.- 52, 57 (1985) was the standard that applied the Strickland standard to the "plea process," it then quoted the Eleventh Circuit's decision in Harrington- V. United States, 415 Fed. Appx. 986, 989 (11th Cir. 2011)(Unpublished)(quoting- Diaz V. United States, 930 F.2d. 832, 835 (11th Cir. 1991) to make the showing- necessary to support his claim.

It stated that, "[Petitioner] has not demonstrated either deficient performance or prejudice because his allegations are vague, conclusory and self serving. (Doc. # 12, id. at pg. 6)

The court pointed to the claim of "Bad advice" as well. (id.) That as in his case, the loss of the motion to suppress, based on his "jurisdictional claim," was was "reasonable" to raise as a defense which he did continue in the section 2255 motion, counsel's advice in "that matter" was not per se, though incorrect. Citing Mostowicz V. United States, 625 Fed. Appx. 489 (11th- Cir. 2015)(Unpublished)

The court went further, to cite "after the fact testimony, concerning a desire to plead, 'without more,' is insufficient to establish but for counsel's alleged advice or inaction, he would have accepted the plea offer." (Citing- a 1991 11th Circuit decision in Diaz, 930 F.2d. id. at 835) Id. at pg. 8)

Ultimately, and most significant, the court cited that "other than the Petitioner's self serving statement, there is no objective evidence to support his assertions..." (Id.)

This by pointing to "the attorney's affidavit," that "[she] presented Petitioner **"with the options of entering a guilty plea with or without a plea agreement or to proceed to jury trial."** (id. 8, quoting CR. Doc. # 4-4, pg.4)

The court therewith citing **Diaz, 930 F.2d. at 835, and Osley V. United - States, F.3d. 1214, 1224 (11th Cir. 2014)** to support the "without more" his "self serving, 'after-the-fact' " statement is insufficient under the Strickland standard. (id.)

The court cited further, "in sum, [Petitioners'] conclusory allegations 1) that counsel was deficient when she advised him to reject the government's plea offer, and 2) that he would have accepted the offer but for counsel's misadvice, warrant neither relief nor an evidentiary hearing. (id. 9)

Thereto, as to the recorded **"factual dispute"** and the fact that the district court had ordered sworn testimony to assist in it's determination in making a decision if an evidentiary hearing was necessary, after this ruling, [Petitioner] placed a recorded telephone call to the **"original interpreter," Ms. Ling, from the prison of confinement, Federal Correctional Institution Safford,** and asked "if she remembered the offer of the ten-year plea agreement and she affirmed that she did remember."

As these phone calls are recorded by the institution, Petitioner filed a motion to seal these phone calls. (Civ. Doc. # 14) Also, a motion to take a deposition pursuant to **Federal Rules of Civil Procedure 27(b)**, along with a Declaration in support. (Id.)

The court denied this request (Doc. # 15) and the proposed pleading's were returned therewith by the court.

Petitioner then filed a motion to reconsider his Rule 27(b) motion. (Doc. # 18) (Appx.-D)

As to the "return of the pleadings," the court cited that there was no motion to reconsider and denied the motion. (Doc. # 20) Thereto, Petitioner filed a Notice of Appeal, and requested that the Eleventh Circuit grant permission for a certificate of appealability. (COA); See case no. 16-11766-A)

On 9-29-2016, the Eleventh Circuit Appellate Court GRANTED a COA citing that: " [Lam] has made a 'substantial showing of the denial of a Constitutional-right' with regard to his claim that counsel provided ineffective assistance of counsel by advising him to reject a favorable plea agreement." (id.) (Appx.-C)

This whether, "the district court erred in denying, without first ordering an evidentiary hearing, [Lam's] claim that he would have accepted a ten-year plea agreement absent ineffective assistance of counsel." (Id.)

Petitioner, via the assistance of a paralegal outside of the prison, presented his opening brief claiming, the simple proposition in support of an evidentiary hearing that:

" [Lam's] Chinese interpreter was present during conversations between [Lam] and his counsel, in a case of 'he said she said,' between [Lam] and his counsel, 'the interpreter is a tie breaker.' "

(See Id. Appellant's Opening Brief at pg. 4)

" That, 'the events in [Lam's] claims occurred outside the courtroom and outside the record, in private, between only [Lam], his counsel and his interpreter."

(id. at pg. 7)

The government responded, and maintained it's earlier position of rejecting, based upon " the attorney's affidavit." (Government's Response to COA)

After this, [Petitioner] began having problems with his paralegal to whom represented to Petitioner that he would file a "timely reply brief." This "did not occur" and as to such Petitioner painstakingly attempted to contact him via a 3rd Party. Thereafter, experienced "communication issues," however, did receive via "e-mail," a copy of the paralegal's brief to submit.

Petitioner thereto, acquired the assistance of another prisoner to request permission to file the brief, "out-of-time," and therewith, for the Eleventh Circuit to notice a recent decision from this Supreme Court in Lee-V. United States, 137 S.Ct. 1958, 198 L.Ed. 2d. 476 (June 23, 2017)

This as to that case being squarely as to the issues regarding an "adequate advisor," in assisting Petitioner in "Making an intelligent decision whether to accept or reject the government's offers or to proceed to trial."

That Petitioner, essentially "had no idea that [he] had any say so in the matter," nor was he "properly advised regarding such."

That, "obviously," the interpreter in the case was the turning element necessary to establish the 'either or dichotomy' in the claims in controversy." This via an presentment pursuant to Federal Rules of Appellate Procedure 28(j).

That [Petitioner], essentially had 'no idea' that [he] had any say so in the matter, nor was [he] properly advised at all." That, "obviously," the interpreter was the turning element " necessary to dispose of all the claims presented. (Id.)

Therewith, Petitioner presented another case, to where evidentiary hearings were held under these similar circumstances. See United States V. Marquez-Huazo, 2014 U.S. Dist. LEXIS 123654 (D.Idaho Sept. 2, 2014), also United - States V. Marquez-Huazo, 2016 U.S. Dist. LEXIS 19365 (D. Idaho Feb. 16, 2016)

Also, in Ting Chen V. United States AG, 618 Fed.Appx. 460 (11th Cir. 2015), and United States V. Noriega, 764 F. Supp. 1480 (S.D. Fla. May 3, 1994) This too pursuant to Fed.R. App. P. 28(j) regarding the "language barrier issues."

On 9-21-2017, the Eleventh Circuit **GRANTED** permission to file the out-of time reply brief, however, made no ruling on the 28(j) issues. (Appx.

On 9-27-2017, Petitioner again filed a letter pursuant to FRAP 28(j) as to a Third Circuit decision in United States V. Vaughn, No. 16-3138 (3d. Cir. 2017) This to where in "similar circumstances" the government "conceded" that in these type of circumstances "an evidentiary hearing" would be necessary.

The Court again, made no ruling on the presentment, nonetheless, on 11-14-2017, the Court of Appeals rendered it's decision in the matter, shockingly affirming the lower court's decision. (Appx. - B)

In making it's review, the Court examined such under it's reasoning in Osley V. United States, 751 F.3d. 1214, 1222 (11th Cir. 2014)("the Strickland-standard applies to ineffective assistance of counsel claims arising out of the 'plea process,' including the 'negotiation and consideration of pleas that are rejected or lapse.") (Id. at 4)

That this "obligation" includes informing a client about a formal plea offer presented by the government, and the failure to "advise" a client about such an offer is ineffective assistance of counsel. (Citing Missouri V. Frye, 566-U.S. 134, 144-45, 132 S.Ct. 1399, 1408 (2012), and Lafler V. Cooper, 566 U.S.-156, 132 S.Ct. 1376 (2012))(Id. at 5)

In recognizing these recent decisions by this Court, the court then cited "However, after the fact testimony concerning [The movant's] desire to plead, 'without more,' is not sufficient to establish 'that, but for counsel's alleged advise or inaction,' he 'would have accepted the plea offer.'" This by relying on and, again citing the 1991 decision from the Eleventh Circuit in Diaz-V. United States, 930 F.2d. 832, 835 (11th Cir. 1991)(id. at 5)

Therewith, the court recognized and cited the "factual dispute in sworn-affidavit's, 'between counsel and [Petitioner's] affidavit's.' "(id. 6-7)

The most pertinent and peculiar issue of the entire District Court and Appellate process, including here on petitioner for certiorari is that the Court also recognized that: " [Lam] and his counsel 'agree' that a Cantonese interpreter was present at each time they met to discuss his case, but they 'disagree' about 'what the interpreter would say' about a 'plea offer.'" (id. at 7)

It is clear, **therefore**, that the "claim of a tie breaker in the sworn - testimony of conflict" that, "the interpreter supports his recollection of events, and as stated in Petitioner's Declaration filed in the district court that the interpreter ' would testify on his behalf, at any evidentiary hearing.'" (id.)

That " [Lam] never provided a declaration or affidavit from the interpreter or explained 'why he was unable to obtain one.'" (id.) That this is supported because [Lam] was informed by the court that [he] needed to submit sworn declarations to avoid dismissal of his section 2255 motion." (id.)

Therewith, Petitioner presented a Motion for Rehearing En Banc pursuant to **Federal Rules of Appellate Procedure 35** citing that as to the determinative "factual dispute" as to this "interpreter" to which was/is the only person that "admittedly by both parties" can state for certainty what exactly occurred" the district courts refusal to call upon this interpreter to either affirm or deny the allegations at an evidentiary hearing under **Section 2255(b)**, the finding of facts therewith is "unreasonable," and "an incorrect manner of exercising it's discretion," and a finding of facts therein is "clearly erroneous." Citing Withrop-Redin V. United States, 767 F.3d. 1210, 1215 (11th Cir. 2014)- (quoting Citizens for Police Accountability Political Caomm. V. Browing, 572 F.-3d. 1213, 1216-17 (11th Cir. 2009))

On January 29, 2018 The Eleventh Circuit Court of Appeals **DENIED** the petition for rehearing for en banc, as " no judge on regular active service on the Court having requested that the court be polled on rehearing en banc. (See Appx. -A)

Therewith, this is the date upon which this Court's **90 Day period** commenced and this petitioner for certiorari herewith is presented as timely.

This request for certiorari is being presented as to this Petitioner's being a foreign National from the country of Hong Kong is/was oblivious to the English language, it's Constitution, it's laws and the process' procedures therewith, was sequestered out of International Waters and taken into the jurisdiction of the United States where he was taken through the American criminal process pursuant to Controlled substance statutes, with the assistance of counsel, who did not speak his language and necessitated a translator/-interpreter at every step of the proceedings. This including the "**plea negotiation process.**"

This attorney on it's own advised this Petitioner (under these circumstances) via this interpreter that "because all of his co-defendants were proceeding to trial by jury so was he." Too that "he had a good chance at winning at trial," and "if he won he could then go home to his country."

This in the face of a plea agreement offered by the government of 10 yrs. Petitioner had absolutely no idea that he had any say so in the matter and thus, as counsel usurped his decision making in the process was ineffective in it's representation in violation of the **Sixth Amendment of the Constitution of the United States of America.**

As both parties agreed in the Section 2255 proceeding that this "interpreter" is the only one to whom can state definitively what Petitioner knew under these circumstances, the district court erred in failing to hold the clearly called for "evidentiary hearing," and this Petition for certriorari follows:

REASONS FOR GRANTING THE PETITION

I. CONSTITUTIONAL STANDARD:

The Sixth Amendment guarantees that:

"In all criminal prosecutions, the accused shall enjoy the right to the assistance of counsel for his defence." U.S. Const. amend VI. See Powell V. - Alabama, 287 U.S. 45, 57, S.Ct. 55, 60, 70 L. ed. 158 (1932)

This "right to the assistance of counsel" was thereafter, recognized as the right to the "effective assistance of counsel." See United States V. Cronin, - 466 U.S. 648, 654, 80 L.Ed. 2d. 657, 104 S.Ct. 2039 (1984)(quoting McMann V. - Richardson, 397 U.S. 759, 771, n. 14, 25 L.Ed. 2d. 763, 90 S.Ct. 1441 (1970))

This Supreme Court has made clear that, in order to establish a claim of the violation of the "effective assistance of counsel," commonly coined as "ineffective assistance of counsel," the Court has established that a Petitioner must show (1) that his attorney's performance was deficient; and (2) said deficiency prejudiced the Petitioner. See Strickland V. Washington, 466 U.S.- 668, 687, 104 S.Ct. 2052, 80 L.Ed. 2d. 674 (1984)

This "two-part test" was thereafter, extended to the "plea agreement - context" (the validity of the plea agreement) in this Court's decision in Hill V. Lockhart, 474 U.S. 52, 88, 106 S.Ct. 366, 88 L.Ed. 2d. 203 (1985)

This by citing: "where a defendant is represented by counsel during the 'plea-process' and enters his plea upon the advice of counsel, the voluntariness of the plea depends upon whether counsel's advice was within the range of competence demanded by attorney's in criminal cases." (quoting McMann, 397 U.S. at- 759, 771)

Applicable herein this request for certiorari, in speaking of this "Plea process," in two of this Court's most notable companion decisions in Lafler V. Cooper, and Missouri V. Frye, this Court reaffirmed that criminal Defendants have a Sixth Amendment right to the effective assistance of counsel at "all critical stages of the criminal proceedings," this to which includes not only, "the entry of a guilty plea," but also, "the plea bargain process as a whole." See Missouri V. Frye, 132 S.Ct. 1399, 1406, 182 L.Ed. 2d. 379 (2012)

That as "plea bargains have become so central to the administration of the criminal justice system, that defense counsel have responsibilities that must be met to render adequate assistance of counsel that the Sixth Amendment requires." Id.

Therewith, the Court went further to essentially do away with nearly 250 years worth of Constitutional jurisprudence when it cited: "[c]riminal justice today is for the most part a system of pleas..." See Lafler V. Cooper, 132 S.Ct. 1376, 1388, 182 L.Ed. 2d. 398 (2012)("This as 'ninety seven percent of Federal Convictions are the result of guilty pleas.")

Though a criminal defendant has no Constitutional right per se to a plea agreement; See Weatherford V. Bursey, 429 U.S. 545, 566, 97 S.Ct. 837, 51 L.Ed. 2d. 30 (1977), however, "if a plea bargain has been offered, a Defendant has the right to the effective assistance of counsel in considering whether to accept it." Lafler, 132 S.Ct. 1387.

(a) DEFICIENT PERFORMANCE:

Under the "Strickland standard," deficient performance requires a showing that counsel's representation fell below and "objective standard of reasonableness," as measured by "prevailing professional norms." Strickland, 466 U.S. at 687-88

Therewith, counsel has the critical obligation to "advise" the client of the "advantages and disadvantages" of entering into a plea agreement. See Padilla V. Kentucky, 559 U.S. ___, 130 S.Ct. ___, 176 L.Ed. 2d. 284 (2010)(quoting- Libretti V. United States, 516 U.S. 29, 50-51, 116 S.Ct. 356, 133 L.ed. 2d. - 271 (1995))

To determine whether a lawyer's practices meet prevailing professional norms, the court must look to "the Standard practices in the relevant area at the time of representation." See Gullen V. Pinholster, 131 S.Ct. 1388, 1407,- 179 L.Ed. 2d. 557 (2011)

The proper standard for attorney performance is that "reasonably effective-assistance," and when a convicted defendant complains of the ineffectiveness of counsels assistance, the defendant must show that counsel's representation "fell below an objective standard of reasonableness," under "the prevailing professional norms." Strickland, 466 U.S. at 688.

In looking to the Standards, Practices and prevailing norms, "at the time," The American Bar Associations (ABA) Standards and the like, are "guides" to determining what is "reasonable." Id. Strickland, see also Padilla, (quoting - Bobby V. Van Hook, 558 U.S. ___, 130 S.Ct. ___, 175 L.Ed. 2d. 255 (2009))

In the instance here presented (ineffective assistance during plea negotiations), the ABA Standards too as asserted as being "highly relevant" a "lawyer must communicate with a client about plea offers and advise the client candidly and competently so that the client may make an informed decision." See- ABA Standards for Criminal Justice, Prosecution and Defense Function 4-4.1(a) (3d.ed. 1993)(defense counsel obligated to investigate facts relevant to the merits of the case and the penalty in the event of a conviction); id. at 4-5.1(a) ("after informing himself or herself fully on the facts and the law, Defense counsel should advise the accused with complete candor concerning all aspects of the case including a candid estimate of a probable outcome.")

Thus, the effective assistance at the "plea bargaining process" is essential and is a "prevailing professional norm" in a criminal prosecution.

(b) PREJUDICE:

Under the "Second prong" of the "**Strickland standard**," prejudice is established where "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." **Strickland**, 466 U.S. at 694.

In the context here of allegations of whether counsel was ineffective for advising against a plea offer which is ultimately rejected, "a defendant must show, that but for the ineffective advice of counsel, there is a reasonable probability that the plea offer would have been presented to the court (i.e.- the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstance, that the court would have accepted it's terms and the conviction and sentence, or both under the offers terms would have been less severe than under the judgment and sentence that in fact were imposed.") **Lafler**, 132 S.Ct. at 1385.

However, it is not enough to show the outcome at trial was worse. Rather movant must "demonstrate a reasonable probability [Movant] would have accepted the earlier plea offer had he been offered the effective assistance of counsel." **Frye**, 132 S.Ct. at 1409.

This is the governing Constitutional standard in place.

The questions herein presented are that "when is it necessary to hold an evidentiary hearing in the face of claim presented under these circumstances" ?

This for as Petitioner as a pro se prisoner layman (to say the least), presented a claim to the District Court in a presentment pursuant to 28 U.S.C.-2255 that: " Counsel rendered ineffective assistance of counsel, in violation of rights guaranteed under Article in amendment VI ("The Sixth Amendment) during the plea negotiation process."

This that, (Through a Cantonese interpreter) counsel presented to [Petitioner] a "ten-year plea agreement." However, after conferring with counsel in the case, [She] advised him to proceed to trial by jury because "all of his co-defendants were proceeding to trial," and "he had a good chance at winning" and "if he won he could go home to Hong Kong."

That, as Petitioner was/is a Hong Kong National, to whom was fished out of International waters by U.S. Authorities and spoke zero English, and never once stepped foot into the United States, he was "boot strapped" with a federal defender who (presumably) spoke zero Cantonese, to which necessitated the assistance of an interpreter throughout the entire action against him.

After the presentment of these claims, as ordered by the District Court, Petitioner presented sworn testimony as to these facts, and to which in response the government presented sworn testimony from the "defense counsel only" to whom made a bald and conclusory statement to which contained several conflicting statements therein.

This where it stated as depicted on page(s) 5-6, herein the Statement of the case section of this Petition.

Readily viewable in the body of the statement the "...and is easily confirmed through Ms. Christina Ling who was present at all meetings with Mr. Lam as interpreter..." And also the "...Likewise Mr. Ruddy, the Assistant United-States Attorney will confirm..." And most importantly the " Through the Cantonese interpreter Mr. Lam was presented with the options of entering a guilty plea 'with or without' a plea agreement or to proceed to jury trial,"

..." His decision to go to trial and testify on his own behalf was his own after consultation with counsel." (Id.)

This bald and conclusory statement was contradictory "at best" for it points vicuriously to the third party (and missing link) interpreters testimony which is not present nor anyway attached thereto. Further, that contrary to the representation that there was no "Ten-year plea deal offered," that through this Interpreter, "[Mr. Lam] was presented with the options of entering a guilty plea "with or without" a plea agreement or proceed to trial. That his "decision to go to trial and testify on his own behalf was his own, 'after - consultation with counsel."

Well, if in fact there was no deal offered, than "what was the with or - without a plea agreement conversation about" ? What was the "other option, if the conversation wasn't about a "ten-year deal "? This in the face of the statement that it "simply did not happen."

How exactly did Mr. Lam "decide on his own" to proceed to trial and testify on his own behalf," after "Consultation with counsel" when Petitioner has absolutely zero knowledge about American law, and counsel did not even try to attempt in it's statement "what was explained to Mr. Lam" in giving the advice whether to accept or reject the purported plea ? Furthermore, and most pertinent how exactly did Petitioner (Mr. Lam) consult with counsel when he did not speak English and counsel did not speak Contonese ?

Through the interpreter, Ms. Ling !

The district court took this statement as "gospel" and rejected any further Petitioner's contentions, denying the clearly necessitated hearing (a limited one at least) with which to call this "interpreter" to the forefront and definitively "make or break the claim."

Thereafter, Petitioner (though belated) was able and did contact said interpreter via the federal prisons phone system (to which are recorded) to whom stated definitively, that "no only was there a ten-year plea offer," but that if called, she would testify to such and the understanding that Petitioner had in the matter.

The court too refused to allow this "hindsight litigation" with which it should have liberally construed under **Federal Rules of Civil Procedure 59(e)** as opposed to the Fed.R.Civ.P. 27(d) pleading to which it was presented and allowed for the development of the newly discovered facts and evidence.

Nonetheless, in the face of all of the facts (i.e. the record and files-of the case) and circumstances the court should have called for an evidentiary hearing and compelled Ms. Ling the interpreter to whom both parties agree were present at all times and who was ready and willing to testify in the matter. This to definitively clarify exactly what transpire in the private off the record conversations that took place between this foreign national and his counsel. For it is only she that can state "with certainty" the relevant facts in this claim, and with which the court could have exercise it's sound discretion in the matter when determining whether or not to grant equitable relief under section 2255.

For not calling the clearly called for evidentiary hearing in this matter the district court clearly erred.

II. EVIDENTIARY HEARING:

Looking to the statute of jurisdiction in this "habeas like" mechanism available for federal prisoners to obtain post-conviction relief from criminal judgments, the statute is clear where it states:

"Unless the motion and files and records of the case conclusively show the prisoner is entitled to no relief, the court shall grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law thereto."

See 28 U.S.C. § 2255(b).

After the creation of this equitable, statutory mechanism for relief, this Supreme Court had the opportunity to examine this statute in its landmark decision to where it spoke clearly that: " **the very purpose of § 2255 is to hold any required hearing in the sentencing court because of the inconvenience of transporting court officials and other 'necessary witnesses' to the district of confinement.**" See United States V. Hayman, 342 U.S. 205, 221, 72 S.Ct. 263,-96 L.ed. 232 (1952).

To procure this hearing it is therewith commonly understood that the presentment of an affidavit or "sworn testimony is necessary." Id. Hayman, 342-U.S. at 213 (citing Walker V. Johnston, 312 U.S. 275, 86 L.ed. 830, 61 S.Ct. 574 (1941)("Walkers application raised material issues of fact holding that the District Court must determine such issues by the taking of evidence, not by ex parte affidavits"))

If this affidavit reveals a "factual controversy," then a hearing thereon would be required. See Machibroda V. United States, 368 U.S. 487, 495, 7 L.Ed.-2d. 473, 479, 25 S.Ct. 510 (1962), Townsend V. Sain, 372 U.S. 293, 312-13, -9 L.Ed. 2d. 770, 83 S.Ct. 745 (1963), and Kaufman V. United States, 394 U.S.-217, 226, 227, 22 L.Ed. 2d. 89 S.Ct. 1068 (1969)

The affidavit requirement is depicted in the Seventh Circuit's (7th Cir.) decision in Kafo V. United States, 467 F.3d. 1063 (7th Cir. 2006) and is for purposes of this presentment "commonly required."

This to which as in Petitioner's case was ordered by the District Court in order to establish his claim.

In speaking of the Seventh Circuit and it's requirements, the Circuit further delineates therewith the necessities of sworn testimony, citing: "lest it sound like a formidable task, (to prove a lawyers non-feasance), the evidence usually employed in such cases begins with 'sworn affidavits,' attesting to the Petitioner's allegations." See Duarte V. United States, 81 F.3d. 75,76- (7th Cir. 1996)(evaluating § 2255 petitions claiming ineffective assistance of counsel based on Petitioners sworn affidavits"); see also Daniels V. United States, 54 F.3d. 290, 293 (7th Cir. 1995)

The Seventh Circuit has made clear therewith, that: " ...it is a rule of this court that in order for a hearing to be granted, the petition must [have been] accompanied by a detailed and specific affidavit..." See Galbraith-V. United States, 313 F. 3d. 1009 (7th Cir. 2002)

Furthermore, where there is a "disputed factual issue" therein, this should be resolved by way of a hearing. United States V. Wilson, 169 F.3d. 418-426 (7th Cir. 2004)

The **Ninth Circuit** has stated that in determining whether a "hearing and findings and conclusions of law are required," "[t]he standard essentially is whether the movant has made specific factual allegations that, if true, state a claim upon which relief could be granted." See United States V. Withers, 638-F.3d. 1055, 1062 (9th Cir. 2011)(quoting United States V. Schlaflander, 743-F.2d. 714, 717 (9th Cir. 1984))

Factual allegations therewith are submitted "in the form of assertions-
'made under the penalty of perjury.' " See United States V. Chacon-Palomares, -
208 F.3d. 1157 (9th Cir. 2000)

Further, evidentiary hearings are particularly appropriate when "claims-
raise facts which occurred outside the courtroom and off of the record." Id.-
208 F.3d. at 1159 (quoting United States V. Burrows, 872 F.2d. 915, 917 (9th -
Cir. 1989); accord Frazer V. United States, 18 F. 3d. 778, 781 (9th Cir. 1994)
and Dognere V. United States, 914 F. 2d. 165, 168 (9th Cir. 1991))

In the Eleventh Circuit to which this cause emanates, the standard is
stated in Arnon V. United States, 291 F.3d. 708, 715 (11th Cir. 2002)(quoting
Section 2255(b))

In Arnon, the Eleventh Circuit cited one of it's earlier decisions in
United States V. Yizar, 956 F.2d. 230, 234 (11th Cir. 1992), where it stated:-
" the district court 'must' hold an evidentiary hearing where the court cannot
state 'conclusively' that the [facts] alleged by the Petitioner, 'taken as true'
would present no ground for relief." Id. 291 F.3d. at 715.

Here in the face of the allegations in "sworn testimony," (duelling affi-
davits, i.e., a "factual dispute") there was an obvious necessity to hold a
hearing.

The attorney's statements, that:

"...and is easily confirmed through Ms. Christina Ling who was present
at all meetings with Mr. Lam as interpreter..." "...likewise, Mr. Ruddy, the
Assistant United States Attorney will confirm,..." And most pertinently,...
"Through the Cantonese interpreter Mr. Lam was presented with the options of
entering a guilty plea ' with or without ' a plea agreement or proceed to jury
trial." "His decision to go to trial and testify on his own behalf was his
own after consultation with counsel."

The questions the district court should have had was obvious. "How exactly it is that this attorney could state in sworn testimony that his decision to go to trial was his own 'after consultation with counsel,' " when counsel does not speak Cantonese, and cannot testify to what another person relayed to Petitioner, and is wholly conclusory and without any support.

The cantonese interpreter is essentially the "missing link" and the sole individual that can attest with certainty as to what exactly transpired between "Petitioner and counsel."

This clearly calls for the further development of testimony from such to which has been ordered in other districts. See United States V. Marquez-Huazo, 2014 U.S. Dist. LEXIS 123654 (D. Idaho Sept. 2, 2014), also United States V. Marquez-Huazo, 2016 U.S. Dist. LEXIS 19365 (D. Idaho Feb. 16, 2016)

Though ultimately the District of Idaho denied relief, it did find it necessary under the circumstances to hold the hearing and call forth the interpreter, two interpreters for that matter.

For even if there was a translator called, was the translator certified ? Was the translation direct ? Was the translation correct ? Was the translation from the dialect to which this Hong Kong National understood ? This for it is clearly understood that normal everyday words are not exactly transferrable in every language. See Ting Chen V. United States AG, 618 Fed. Appx. 460 (11th Cir. 2015) Also it is understood there may be mistakes in understanding foreign language. United States V. Noriega, 764 F. Supp. 1480 (S.D. Fla. May 3, 1994)

Moreso, and again, the material fact that it was counsel who made the ultimate decision to proceed to trial, not Petitioner.

This to whom was a Hong Kong National having never once stepped foot in the U.S. jurisdiction, spoke no English what-so-ever, let alone having an understanding of the dynamics of the complexities and intricacies of a trial by jury or a plea agreement. This without the trained expertise and adequate advice therewith from skilled counsel.

The peculiar issue of the day is that the District Court recognized that "Lam and his counsel 'agree' that a Cantonese interpreter was present at each time they met to discuss his case, but they 'disagree' about what the interpreter would say about a 'plea offer.' "

(See Appx. E, Per Curiam Opinion, at pg. 7)

It recognized further that, as asserted by Petitioner in his declaration filed, that " the interpreter would testify on his behalf, at an evidentiary hearing." (Id.)

Therewith, it ultimately stated: " Lam never provided a declaration or affidavit from an interpreter or explained ' why he was unable to obtain one.'" (id.)

This is so, even though Petitioner was directed by the district court in the first instance that he needed to submit sworn testimony to avoid dismissal of his section 2255 motion, to which he complied. (Appx.-F)

Here the only possible was that the court could have determined the material element of an "effective communication of formal offers from the prosecution that "may have been favorable to an accused" (here a 10 year plea-deal) this to which defense counsel has an "affirmative duty" under the Sixth Amendment to provide "competent advice" therewith under this courts decision in Missouri V. Frye, 566 U.S. 134, 145, 132 S.Ct. 1399, 1408), 182 L.Ed. 2d. 379 (2012)(Citing Padilla, 559 U.S. at 373; Hill V. Lockhart, 474 U.S. 52,57-

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...106 S.Ct. 366, 88 L.Ed. 2d. 203 (1985) would be to call upon this "interpréter" at a hearing in open court to which was asserted by both parties that she would be a "willing participant."

The district court herein for the Middle District of Florida abused it's discretion in failing to hold this clearly called for hearing. As the result, this foreigner to whom was sequestered out of international waters and taken into the jurisdiction of the United States has to suffer the tortuous nightmare that had he received the "effective assistance of counsel" under the Constitution of this **Great Nation** and had the government's offer been communicated to him or any other advice in the matter regarding a plea of guilt, with the advice that it was solely his decision with which to make the decision to accept or reject a 10 year plea agreement or suffer the gamble and serve 25 years, he would have choose the latter and been able to have been returned home to his Country. as opposed to languishing in U.S. prisons having not seen his family in nearly a decade.

The question presented therewith is: **"When is it necessary to hold this type of hearing under these premise " ?**

This Court has set forth the "appropriate standard" to be applied by a "federal court in ' habeas corpus ' when 'the facts' pertinent to a habeas petition are in dispute. See Townsend V. Sain, 372 U.S. 293, 312, 83 S.Ct. 745 9 L.Ed. 2d. 770 (1963); see also Jefferson V. Upton, 560 U.S. ___, 130 S.Ct. ___ 176 L.Ed. 2d. 1032 (2010)(Per Curiam)

However, it is not clearly understood across the Federal Criminal justice system that Section 2255 is "not a habeas corpus petition." See United States V. Hayman, 342 U.S. 205, 221, 96 L.ed. 32, 72 S.Ct. 263 (1952)(" This is not - a habeas corpus proceeding"); see also Ladner V. United States, 358 U.S. 169, 179, 3 L.ed. 199 (1955)(citing United States V. Hayman, 342 U.S. 205, 217, 96 L.ed. 232, 72 S.Ct. 263 (1952)("...the motion remedy broadly covers all situations where the sentence is open to 'collateral attack.'" As a remedy it is intended to be as broad as habeas corpus."))

Thereafter, and again, this Court has cited that Section 2255 was "like-a petition for habeas corpus," See Heflin V. United States, 358 U.S. 415, 3 - L.ed.2d. 407 (1959)("exactly commensurate with habeas corpus"), Hill V. United States, 368 U.S. 424, 7 L.Ed.2d. 417, 82 S.Ct. 468 , reh. denied, 369 U.S. 808,- 7 L.Ed. 2d. 556, 82 S.Ct. 640 (1962), Sanders V. United States, 373 U.S. 1, 14,- 10 L.Ed. 2d. 148 (1963), Kaufman V. United States, 394 U.S. 221, 222, 22 L.Ed.- 2d. 227, 89 S.Ct. 1068 (1969)(" The same right in another more convenient forum") Harris V. Nelson, 394 U.S. 286, 308, 22 L.Ed. 2d. 281, 89 S.Ct. 1623 (1969)- (" statutory counterpart"); United States V. MacGillom, 426 U.S. 317, 334, 48- L.Ed. 2d. 666, 96 S.Ct. 2086 (1976)(Dissent)(quoting Davis V. United States, - 417 U.S. 333, 343, 41 L.Ed. 2d. 109, 94 S.Ct. 2298 (1974)("Identical in scope to Federal habeas corpus"), United States V. Frady, 456 U.S. 152, 182, 71 L.Ed- 2d. 816, 1025 S.Ct. 1584, reh. den. (US) 73 L.Ed. 2d. 1296, 102 S.Ct. 2287 - (1982)(" Congress could not have been more explicit: section 2254 provided for a Civil action, but a 2255 motion was a further step in the criminal action in the case where the petitioner was sentenced."), Duncan V. Walker, 533 U.S. - 167, 169, 150 L.Ed. 2d. 251, 121 S.Ct. 2120 (2001)(" federal habeas corpus Petition is not an application for state post-conviction or 'other collateral-

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...review within the meaning of 28 U.S.C. § 2244(d)(2)..."), also Clay V. - United States, 537 U.S. 522, 528, 155 L.Ed.2d. 88, 123 S.Ct. 1072 (2003)("habeas-like relief...")

Therefore, the question is in this collateral motion for relief, "when is it necessary to hold an evidentiary hearing " ?

The Hayman Court described the statute being that,

§ 2255 requires that the trial court act on a motion as follows:

" cause notice thereof, to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." Id. 342 U.S. at 220.

It went further to cite:

" In requiring a ' hearing' this section has obvious references to the traditions of judicial proceedings." Id.(quoting Morgan V. United States, 298 U.S. - 468, 80 L.ed. 1288, 1294, 56 S.Ct. 906 (1936))

This Court ultimately concluded:

"...the District Court did not proceed in conformity with § 2255 when it made findings on controverted issues of fact relating to respondents own knowledge without notice to respondent and without being present." Id., See also Swisher-V. Brady, 438 U.S. 204, 230, 57 L.Ed. 2d. 705, 98 S.Ct. 2699 (1978)(quoting Wingo V. Wedding, 418 U.S. 461, 41 L.Ed. 2d. 879, 94 S.Ct. 2842 (1974))

The question herein remains as to the substantive nature of this ineffective assistance of counsel claim in violation of the Sixth Amendment right guaranteed during the "plea negotiation process," that:

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..."When is it necessary to hold an evidentiary hearing under the allegations of a claim presented under the principles , 'rights have you,' set forth by this Court in it's companion decisions in *Lafler V. Cooper*, and *Missouri V.-Frye*, in a Section 2255 proceeding" ?

This for in the face of "sworn allegations of fact" by a lay foreign National from Hong Kong to whom was fished out of International waters and taken to the U.S. to be prosecuted and ran through the gambit of the complexities of the legal action in a Federal Court, this to whom spoke zero English, let alone knew the system of law that not even some judges know. He therewith required the aid of an interpreter every step of the way.

This in direct contravention of an "ambiguous and contradictory statement" submitted by the attorney, to whom both agree that "a third party 'the interpreter' was the linchpin to both of their allegations."

For the district court to call forth this interpreter and explain the "factual assertions" and clarify as to which would essentially be a "tie-breaker" in the matter, when such person was ready and willing was an abuse of it's discretion, "clearly" by this court. This for it would have established with certainty the material element of the ineffective "advice claim" in the criminal action against this Petitioner.

This Court has cited nearly 85 years ago, that as the run of the mill criminal defendant in *Powell V. Alabama*, 287 U.S. 45, 77 L.ed. 158, 53 S.Ct.-55, 84 ALR 527 (1932):

"The layman defendant ' requires the guiding hand of counsel at every step in the proceeding, against him.' " *Id.* at 69-77 L.ed. 158, 53 S.Ct. 55, 84 ALR 527 (Emphasis added)

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...If charged with a crime, he is incapable, generally of determining for himself whether the indictment is good or bad, he is familiar with the rules of evidence, left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, evidence irrelevant to the issue or otherwise inadmissible. **Id.**

This should now be understood of "determining whether or not to 'accept or reject' a plea given by the government to which would have resulted in a lesser sentence."

Therewith, the **ABA Standards** further cite that ..." A lawyer must notify the client of decisions to be made by the client...and must explain a matter as to the extent reasonably necessary to permit the client to make an informed decision regarding the representation.." **Restatement (Third) of the law governing Lawyers § 3(3); see Roe V. Flores-Ortega, 528 U.S. 470, 491, 145 L.Ed. 2d. 985, 120 S.Ct. 1029 (2000)**

This obviously as to the run-of-the-mill layman. Here, not only is Petitioner a "layman," he too is a foreign National who spoke no English, and who never once been in America (not even in the allegations against him with which he committed the alleged offense), he had to have all of his advice given to him in the matter regarding decisions in the case against him.

This to which later alleged that upon notice of some form of offer of a guilty plea, the advice given to him by counsel was simply:

" You are going to trial, all of the other defendants are going, so are you..."

Not only did Petitioner not know the significance of a trial by jury as opposed to a plea agreement, but "[he] had no idea he had any say so in the matter."

With the effective advice knowing that being in the possession of this amount of narcotics on the high seas as he was the operator of the vessel the U.S. would sequester his boat as "stateless" (although controversially) and take him into their jurisdiction to be prosecuted and given 25 years in an American prison, **he would have accepted the governments offers and plead guilty.**

this attorney may not swear vicariously on behalf of this "interpreter." Furthermore, as this attorney does not speak "Cantonese," [She] has no idea what was explained to Petitioner in the matter, and only this interpreter can assert the material element in this case and **THEREFORE**, Petitioner respectfully requests that this Supreme Court of the United States **GRANT certiorari** ~~in this matter and explain when an evidentiary hearing in these circumstances~~ is necessary, especially in a case of a "Non-English Speaking foreign National" represented by a "Non-language speaking attorney," to whom necessitated an interpreter at every single meeting with it's client.

Or exercise it's Supervisory Authority and GRANT, VACATE AND REMAND ("GVR") with the directive for the district court to call for the clearly required evidentiary hearing in the matter respectfully.

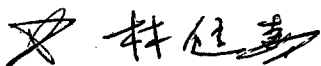
This for there remains contested factual issues in the record in sworn testimony to which an evidentiary hearing would resolve. See Stephens V. Kemp, - 469 U.S. 1043, 83 L.Ed. 2d. 417, 105 S.Ct. 530, reh. den. 469 U.S. 1099, 83 L.-Ed. 2d. 718, 105 S.Ct. 609 (1984)(quoting Price V. Johnston, 334 U.S. 266, 292 92 L.Ed. 1356, 68 S.Ct. 1049 (1948))

CONCLUSION

WHEREFORE based upon the statement of the case, the factual basis therein, and the necessity to clarify under these circumstances that an evidentiary hearing is clearly required. It is therewith respectfully requested that this Honorable Supreme Court GRANT certiorari and award this foreign National an attorney to who either A. Speaks Cantonese, or B. is accompanied by a certified Cantonese interpreter, OR GRANT, VACATE AND REMAND ("GVR") with instructions to the Middle District of Florida to hold the clearly required evidentiary hearing and call forth the original interpreter to be placed upon examination and explain to the Court and every other interested party what exactly was conveyed to this Non-English speaking criminal Defendant facing the possibility of twenty five years plus upon a finding of guilt at trial as opposed to entering into a plea agreement with the prosecution. This to without the information from said interpreter it is not certain that Petitioner could have possibly known the significance of such.

Certiorari should be GRANTED in this case.

Respectfully submitted,



PETITIONER PRO SE-CHUN HEI LAM

April 2, 2018