

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TONY KHONG,

Petitioner,

v.

SCOTT FRAUENHEIM,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

**APPENDIX (VOLUME VII) – PRESENTED SEPARATELY UNDER S. CT.
R. 14.1(i)**

DAVID A. SCHLESINGER
JACOBS & SCHLESINGER LLP
The Douglas Wilson Companies Building
1620 Fifth Avenue, Suite 750
San Diego, CA 92101
Telephone: (619) 230-0012
david@jsslegal.com

Counsel for Petitioner

A prosecutors duty to disclose...material evidence favorable to the accused, even without a request, does not end when the trial is over. A prosecutors ethical duties, which impose an independent duty to disclose, that endures beyond judgment. Nothing precludes defendant from seeking to overturn their conviction on appeal or in collateral review proceeding, (such as Habeas Corpus) on the ground that prosecution suppressed favorable material evidence prior to trial. (Although Brady disclosure issues may arise "in advance of" "during" or "after trial," the test is always the same.) (Quoting: City of Los Angeles V. Superior Court, 29 Cal. 4th 1,8(2002)).

Respondent contends that this favorable impeachment evidence is not ordinarily "material" because it does refute an essential element of the government case (Ans pg.13,14.). Petitioner assert Respondent is incorrect. "A prosecutor's ethical duties may require disclosure of favorable evidence regardless of it's materiality."(Cone V. Bell, 556 U.S. 449,470 N-15(2009)).

Respondent tries to divert this Honorable Courts attention to what is material and what is not. When the true issue is, what is Brady material. The High Courts have concluded in (Strickler V. Green 527 U.S. 263,281-82), that, "BRADY reaches" evidence.... favorable to the accused, either because it is exculpatory, or because it is impeaching."

Officer Winchester was certainly acting on the Governments behalf in this case, as he was called to testify by the prosecutor, in front of a jury. If the prosecutor would have followed the laws of the high court, the witness could have been impeached. "The individual prosecutor has a duty to learn of any favorable evidence known to others acting on the governments behalf in the case." (People V. Letner and Tobin, 50 Cal. 4th 99,175(2010)(Citation and internal quotations omitted.);(Kyles V. Whitley, 514 U.S. 419,437 (1995));(Strickler V. Green, 527 U.S. 263, 280-81(1999); Zombrano 41 Cal 4th at 1132).

Because of this duty, the prosecutor is:(1) presumed to have knowledge of all information gathered in connection with the governments investigation."(United States V. Payne, 63 F.3d 1200, 1208 (2d cir.(1995))., and (2) deemed to be in "Constructive possession" of that information, (Barnett V. Superior Court, 50 Cal 4th 890, 903 (2010). In re: Brown, 17 Cal 4th 873,881 (1998)).

Respondent is asking this Honorable Court to hold against Petitioner something that the prosecutor's team should have done, investigate their own witness' background.

Imputing the prosecutor teams knowledge to the prosecutor serves two purposes. One of those purposes prevents a prosecutor from "getting around Brady by keeping themselves in ignorance", (In re: Brown, 17 Cal. 4th at 879 N.3.), or by "adopting a practice of "see no evil or hear no evil", Ripre V. Kassim, 56 Cal. App 4th 1360,1386 (1997).

Brady suppression occurs when the "government fails to turnover.. evidence that is known only to police investigators and not the prosecutor." (Quoting Kyles, 514 U.S. at 438.)

Because suppression turns on the fact of non-disclosure alone, the prosecutions intentions-good or bad- faith do not matter. (Uribe, 162 Cal. App. 4th at 1475.) Indeed, Brady itself declared that the, "good or bad faith of the prosecution" is irrelevant to whether there has been a "Brady Violation". (Brady V. Maryland 373 U.S. 83,87(1963).

Respondent tries to argue that "even if evidence impeaching officer Winchester's credibility had been presented at trial, the admission of that evidence would not have put the whole case in such a different light as to undermine confidence in the verdict." (Ans. pg.15, line10-12). But petitioner asserts as in (kyles, 514 at 434-35, " the question is not whether the defendant would more likely than not recieved a different verdict with the (undisclosed) evidence, but whether in its absence, he recieved a fair trial.") Petitioner asserts that a fair trial is a trial that follows the Constitutional Guarantees of our great Nation, i.e. Due Process, Equal Protection of the law, and the right to a fair trial.

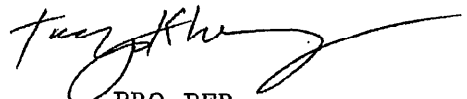
A structural discovery error occurs when the government withholds material evidence favorable to defendeant, see Brady V. Md. 373 U.S. 83,87(1963). And structural errors/defects that fundamentally undermine the reliability fairness of a trial, require reversal and are not subject to harmless error review.

"Once materiality of suppressed evidence is established, no need for harmless review." See; (U.S. V. Khring 637 F.3d 895,902 (9th Cir. 2011) Petitioner has met the burden of establishing that the suppressed evidence was material to a fair trial and Due process of the law.

Based on the foregoing, Petitioner is requesting and should be granted an evidentiary hearing on his claims, and the Petitioner should be granted a counsel and the Petitioner should be granted.

Dated: 10/7/18

Respectfully Submitted,


PRO-PER

PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, TONY KHONG, declare: I am over 18 years of
(INSERT FULL NAME)
age and a party to this action. I am a resident of Pleasant Valley
State Prison (P.V.S.P.), in the city of Coalinga, in the state of
California. My prison address is: TONY KHONG,
(INSERT FULL NAME)
632579, P.O. Box 8500, Coalinga, CA 93210.
(INSERT CODE #)

On 10 / 7 / 2018, I served the attached: TRAVERSE
(INSERT DOCUMENT NAME(S))

on the parties herein by placing true and correct copies thereof,
enclosed in an envelope, with postage thereon fully paid, in the
United States Mail in a deposit box so provided at the above-named
prison in which I am presently confined. The envelope(s) was/were
addressed as follows:

<u>United States Courts</u>	<u>Office of the Attorney General</u>
<u>Eastern District of California</u>	<u>Department of Justice</u>
<u>501 I St. STE 4-200</u>	<u>P.O. Box 944255</u>
<u>Sacramento, Ca 95814-2322</u>	<u>Sacramento, Ca 94244-2550</u>

I declare under penalty of perjury under the laws of the United
States of America that the foregoing is true and correct.

Executed on 10 / 7 / 2018, Signed: Tony Khong

(FULL NAME, IN PRO PER/PRO SE)

1 TONY KHONG
2 G32579-60-09
3 5150 O'BYRNES FERRY RD.
4 JAMESTOWN, CA. 95327

5 IN PRO SE

FILED

JUL 22 2019

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY AMC
DEPUTY CLERK

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

9 TONY KHONG,
10 Petitioner,
11 v.
12 SCOTT FRAUENHEIM,
13 Respondent.

No. 2:18-cv-0580 KJM DB P

PETITIONER'S OBJECTIONS TO THE
MAGISTRATE JUDGE'S FINDINGS AND
RECOMMENDATIONS / PETITIONER'S
APPLICATION FOR CERTIFICATE OF
APPEALABILITY

15 NOW COMES PETITIONER TONY KHONG, filing his Objections To The
16 Magistrate Judge's Findings And Recommendations.

17 First, this Honorable Court has granted Petitioner to and
18 including July 31, 2019 to file this objection brief. (DOC. 21.)

19 Second, Petitioner is also including his Application For
20 Certificate Of Appealability in the event the Court denies relief
21 to Petitioner.

22 Petitioner's writ petition contained one issue in that the
23 prosecutor withheld evidence that would have been used to impeach
24 the prosecutions witness, Police Officer Noah Winchester. Whom was
25 the initial and investigative police person to the genesis of
26 Petitioner's arrest and conviction.

27 The prosecution failed to disclose to the defense and the Court

1 that Winchester was charged with on-duty sexual assaults involving
2 five women all in separate incidents on different days...dating
3 back to 2013. Petitioner's petition at pages 3-15 detailed all the
4 aforementioned coupled with Exhibits B through D therein.

5 Winchester was charged with these offenses on July 16, 2016.
6 In the Superior Court of San Mateo County...case number 16SF00-
7 8803-A. Winchester was ultimately convicted of numerous sexual
8 assault charges involving minors.

9 All though Petitioner's interactions with Winchester took place
10 in 2011...two years before Winchester's first sexual assault
11 allegations came to light. The adjudication of Petitioner's case
12 took place from 2011 to April 10, 2014, the date the jury found
13 Petitioner guilty to May 16, 2014 the day of sentencing. Thus,
14 during the time of Petitioner's trial, Winchester had committed
15 his crimes and had been under full investigation for those crimes.

16 Hence, the prosecution had a duty to disclose but did not
17 disclose to the Court nor anyone...this was deliberate indifference
18 to the rule of law and evidence. The F&R at pages 10-11 has
19 properly defined the legal standard for a **BRADY** claim. In that the
20 prosecution had a duty to disclose even though there had been no
21 request by Petitioner or defense counsel. **UNITED STATES v. AGURS**
22 **(1976) 427 U.S. 97, 107.** See also, **YOUNGBLOOD v. WEST VIRGINIA**
23 **(2006).** A **BRADY** violation also occurs when the government fails to
24 turn over evidence known only to police investigators and not to
25 the prosecution [quoting from **KYLES v. WHITLEY (2006) 514 U.S.**
26 **419, 437]**.

27 Petitioner points out in his petition that Winchester testified

1 as to what Cindy T. told him. Because C.T. was unavailable to
2 testify. C.T. was one of the complaining witnesses.

3 The jury also had questions regarding Winchester's testimony.
4 In fact, during deliberations, the jury asked the trial court for
5 testimony regarding Winchester. C.T. and others evolving around
6 what Winchester testified too as to what the said to him. The
7 F&R covers this on pages 13-15.

8 Human nature as this Court well knows is a force that cannot
9 be over looked. If the jurors had been provided details as to
10 Winchester being investigated for assaulting over five minor
11 children coupled with Petitioner's case involving minor's as well.
12 Winchester's testimony would become suspect. It is most probable,
13 knowing human nature that we all do. That at least one juror, if
14 not more would have found Petitioner not guilty of one or more of
15 the charges. Because Winchester had an alterior motive to look
16 like the knight in shinning armor for children. When in fact, he
17 was a wolf in sheeps clothing.

18 Because these facts bear out that a different out come was in
19 fact possible with at least one juror. This Honor Court must
20 reverse Petitioner's conviction.

21 the F&R does not explore these facts stated herein regarding
22 Police Officer Winchester. The F&R only stated "The impeachment
23 evidence of the sexual assault investigation of Winchester was
24 not material under BRADY." (F&R at page 15.)

25 Butth the facts are, it was all very much material...for
26 Winchester was and is now serving a lengthy prison sentence.

27 //

PETITIONER'S APPLICATION FOR CERTIFICATE OF APPEALABILITY (COA)

In the alternative that the District Court Judge upholds the F&R. Petitioner is filing his Application For Certificate of Appealability regarding the BRADY violation. Which is the sole issue in the Writ Petition.

In order to obtain a COA, the petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2). However, the petitioner need not show that he should prevail on the merits. **LAMBRIGHT v. STEWART** (9th Cir. 2000) 220 F.3d 1022 (en banc) ["...[O]bviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor"]. Rather, the petitioner is merely required to make the "modest" showing (**LAMBRIGHT, supra, at 1025**) that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." **SLACK v. McDANIEL** (2000) 529 U.S. 473, 484, **TENNARD v. DRETKE** (2004) 542 U.S. 274, 282-283.

As explained by the Ninth Circuit in **JENNINGS v. WOODFORD** (9th Cir. 2002) 290 F.3d 1006, the substantial showing standard required for a COA is "relatively low." *Id.*, at 1011, citing **SLACK, SUPRA**. Hence, a COA must issue if any of the following apply: (1) the issues are debatable among reasonable jurists; (2) another court could resolve the issues differently; or (3) the questions raised are adequate enough to encourage the petitioner to proceed further.

Finally, "The court must resolve doubts about the propriety of a COA in the petitioner's favor." **JENNINGS, supra, citing LAMBRIGHT, supra, at page 1025.**

1 Here in the present, Petitioner has claelry articulated that
2 reasonable jurists could differ as to whether the prosecution
3 committed a **BRADY** violation and or another court could resolve
4 the issue differently.

5 For the reasons stated herein, should the District Court over
6 rule Petitioner's Objections to the F&R and enter an order denying
7 Petitioner's habeas corpus petition the Court should issue the
8 COA to the sole issue of the **BRADY** violation by the prosecution.

9 I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE
10 STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

11 EXECUTED THIS DAY OF JULY 18 2019.

12 RESPECTFULLY SUBMITTED,

13
14 
15 TONY KHONG
16 IN PRO SE
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PROOF OF SERVICE BY MAIL BY A PERSON IN STATE CUSTODY

I, TONY KHONG DECLARE;
I am over 18 years of age and I am ~~XXXXX~~ a party to this action. I am a resident of
SIERRA CONSERVATION CENTER, JAMESTOWN, CALIFORNIA.
On 7/18/ 2019 I served the following;

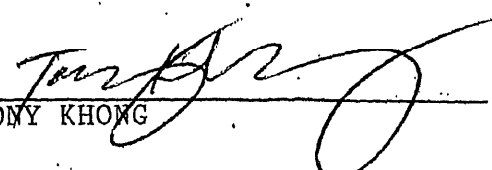
PETITIONER'S OBJECTIONS TO THE MAGISTRATE JUDGE'S FINDINGS
AND RECOMMENDATIONS / PETITIONER'S APPLICATION FOR CERTIFICATE
OF APPEALABILITY

On the parties named herein below, by placing true and correct copie(s) thereof, enclosed in a sealed envelope(s), with postage there on fully prepaid, in the United States Mail Box so provided at the above named facility in which I am presently confined at.
The envelope(s) were addressed as follows;

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 944255
SACRAMENTO, CA. 94244-2550

ATT: BRIAN R. MEANS
DEPUTY ATTORNEY GENERAL

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.
Executed this day 7/18/ 2019


TONY KHONG

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**OFFICE OF THE CLERK
501 "I" Street
Sacramento, CA 95814**

TONY KHONG,
Plaintiff

v.

CASE NO. 2:18-CV-00580-KJM-DB

SCOTT FRAUENHEIM,
Defendant

You are hereby notified that a Notice of Appeal was filed on **October 09, 2020** in the above entitled case. Enclosed is a copy of the Notice of Appeal, pursuant to FRAP 3(d).

October 13, 2020

**KEITH HOLLAND
CLERK OF COURT**

by: /s/ H. Huang
Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**OFFICE OF THE CLERK
501 "I" Street
Sacramento, CA 95814**

TO: CLERK, U.S. COURT OF APPEALS

FROM: CLERK, U.S. DISTRICT COURT

SUBJECT: NEW APPEALS DOCKETING INFORMATION

CASE INFORMATION

USDC Number: 2:18-CV-00580-KJM-DB

USDC Judge: CHIEF DISTRICT JUDGE KIMBERLY J. MUELLER

USCA Number: NEW APPEAL

Complete Case Title: TONY KHONG vs. SCOTT FRAUENHEIM

Type: CIVIL

Complaint Filed: 3/16/2018

Appealed Order/Judgment Filed: 9/8/2020

Court Reporter Information: N/A

FEE INFORMATION

Fee Status: Not Paid – Billed

Information prepared by: /s/ **H. Huang** , Deputy Clerk

TONY KHONG Case 2:18-cv-00580-KJM-DB Document 25 Filed 10/09/20 Page 1 of 1
G32579-60-09
5150 O'BYRNES FERRY RD.
JAMESTOWN, CA. 95327

FILED

OCT - 9 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

TONY KHONG,
Petitioner/Appellant,
v.
SCOTT FRAUENHEIM,
Respondent/Appellee.

District Court No. 2:18-cv-0580 KJM-DB P

NOTICE OF APPEAL

Notice is hereby given that TONY KHONG in the above named case hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment from the District Courts order adopting the Magistrate's Findings and Recommendations denying the Habeas Corpus Petition by a Prisoner in State Custody (§2254) entered in this action on the day of September 8, 2020.

Petitioner/Appellant brings to the Courts attention that the prison mailroom did not receive the final judgment ORDER until October 1, 2020. The Court mailing envelope is date stamped by prison officials reflecting such. Petitioner/Appellant was unable to obtain a copy of the envelope before this mailing. But has retained the envelope in the event this NOTICE OF APPEAL is received untimely.

EXECUTED THIS DAY OF OCTOBER 2, 2020.

Tony Khong
TONY KHONG
IN PRO SE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 20 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TONY KHONG,

Petitioner-Appellant,

v.

SCOTT FRAUENHEIM, Warden,

Respondent-Appellee.

No. 20-17032

D.C. No. 2:18-cv-00580-KJM-DB
Eastern District of California,
Sacramento

ORDER

Before: CLIFTON and BENNETT, Circuit Judges.

The request for a certificate of appealability is granted with respect to the following issue: whether the prosecution violated *Brady v. Maryland*, 373 U.S. 83, 87 (1963), including whether this claim was properly exhausted or procedurally defaulted. *See* 28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e).

A review of this court's docket reflects that the filing and docketing fees for this appeal are due. Within 21 days of the filing date of this order, appellant must either (1) pay to the district court the \$505.00 filing and docketing fees for this appeal and file in this court proof of such payment, or (2) file in this court a motion to proceed in forma pauperis, accompanied by a completed Form CJA 23. Failure to pay the fees or file a motion to proceed in forma pauperis will result in the automatic dismissal of the appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

If appellant moves to proceed in forma pauperis, appellant may simultaneously file a Form 24 motion for appointment of counsel.

The Clerk will serve a copy of Form CJA 23 and Form 24 on appellant.

If appellant pays the fees, the following briefing schedule will apply: the opening brief is due March 21, 2022; the answering brief is due April 20, 2022; the optional reply brief is due within 21 days after service of the answering brief. If appellant files a motion to proceed in forma pauperis, the briefing schedule will be set upon disposition of the motion.

The Clerk will serve on appellant a copy of the “After Opening a Case – Pro Se Appellants” document.

If Scott Frauenheim is no longer the appropriate appellee in this case, counsel for appellee must notify this court by letter of the appropriate substitute party within 21 days of the filing date of this order. *See* Fed. R. App. P. 43(c).

The Clerk will update the docket to reflect that appellant’s current address is Tony Khong, CDCR No. G32579, California Rehabilitation Center, P.O. Box 3535, Norco, CA 92860. Appellant is reminded that any change of address must be reported immediately and in writing to the Clerk of the court. *See* 9th Cir. R. 46-3.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Tony Khong

Case №: 2:18-cv-00580 KJM

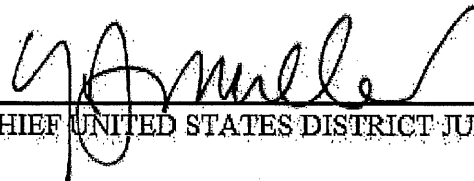
vs.

**ORDER
APPOINTING COUNSEL**

Scott Frauenheim

The circuit court ordered the Federal Defender to locate counsel for an appeal. CJA Panel attorney David A. Schlesinger is hereby appointed effective February 22, 2022, the date the Office of the Federal Defender contacted him. The defendant was previously determined to qualify for appointed counsel.

DATED: March 2, 2022.


CHIEF UNITED STATES DISTRICT JUDGE

**U.S. District Court
Eastern District of California – Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:18-cv-00580-KJM-DB**

(HC) Khong v. Frauenheim
Assigned to: Chief District Judge Kimberly J. Mueller
Referred to: Magistrate Judge Deborah Barnes
Case in other court: 9th Circuit Court of Appeals, 20-17032
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 03/16/2018
Date Terminated: 09/08/2020
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner**Tony Khong**

represented by **David Andrew Schlesinger**
Jacobs & Schlesinger LLP
1620 5th Avenue
Suite 750
San Diego, CA 92101-2751
(619) 230-0012
Fax: (619) 230-0044
Email: david@jsslegal.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Respondent**Scott Frauenheim**

represented by **Brian Roy Means**
Attorney General's Office for the State of
California
Department of Justice
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
916-210-7742
Fax: 916-324-2960
Email: Brian.Means@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/16/2018	<u>1</u>	PETITION for WRIT of HABEAS CORPUS against Scott Frauenheim by Tony Khong. (Attachments: # <u>1</u> Civil Cover Sheet) (Fabillaran, J) (Entered: 03/19/2018)
03/19/2018	<u>2</u>	PRISONER NEW CASE DOCUMENTS and ORDER RE CONSENT ISSUED; Consent or Decline due by 4/23/2018 (Attachments: # <u>1</u> Order re Consent) (Fabillaran, J) (Entered: 03/19/2018)
03/19/2018		SERVICE BY MAIL: <u>2</u> Prisoner New Case Documents for Magistrate Judge as Presider served on Tony Khong. (Fabillaran, J) (Entered: 03/19/2018)
03/22/2018	<u>3</u>	ORDER signed by Magistrate Judge Deborah Barnes on 3/21/2018 ORDERING petitioner to submit, within 30 days, an affidavit to proceed ifp or the appropriate filing fee; and the Clerk shall send petitioner an ifp form. (Yin, K) (Entered: 03/22/2018)
03/22/2018		SERVICE BY MAIL: <u>3</u> Order and ifp form served on Tony Khong. (Yin, K) (Entered: 03/22/2018)
03/30/2018	<u>4</u>	DECLINE to PROCEED BEFORE US MAGISTRATE JUDGE by Tony Khong. (Becknal, R) (Entered: 04/02/2018)

04/03/2018	<u>5</u>	CLERK'S NOTICE (text only) this case been assigned to US District Judge Kimberly J. Mueller and US Magistrate Judge Deborah Barnes; the new case number is 2:18-cv-00580-KJM-DB (HC).(Becknal, R) (Entered: 04/03/2018)
04/03/2018		SERVICE BY MAIL: <u>5</u> Clerk's Notice served on Tony Khong. (Becknal, R) (Entered: 04/03/2018)
04/04/2018		RECEIPT number #CAE200089083 \$5.00 fbo Tong Khong by Steven Khong on 4/4/2018. (Kastilahn, A) (Entered: 04/04/2018)
06/11/2018	<u>6</u>	ORDER signed by Magistrate Judge Deborah Barnes on 6/8/2018 DIRECTING RESPONDENT to File a Response to Petition within 60 days from the date of this order. Clerk to serve a copy of this order, a copy of the Petition, and the Order re Consent on the Attorney General. (cc: Tami Krenzin, Supervising Deputy Attorney General) (Henshaw, R) (Entered: 06/11/2018)
06/11/2018		SERVICE BY MAIL: <u>6</u> Order Directing Respondent to File a Response to the Petition served on Tony Khong. (Henshaw, R) (Entered: 06/11/2018)
06/11/2018	<u>7</u>	ORDER RE CONSENT OR REQUEST FOR REASSIGNMENT signed by Magistrate Judge Deborah Barnes on 6/11/2018. Consent or Decline due by 7/16/2018. (cc: Tami Krenzin, Supervising Deputy Attorney General) (Henshaw, R) (Entered: 06/11/2018)
06/11/2018	<u>8</u>	DOCUMENT SERVED ELECTRONICALLY: <u>1</u> Petition for Writ of Habeas Corpus served on Tami Krenzin, Supervising Deputy Attorney General. (Henshaw, R) (Entered: 06/11/2018)
06/29/2018	<u>2</u>	REQUEST for copy of Local Rules by Tony Khong. (Washington, S) (Entered: 07/02/2018)
07/06/2018	<u>10</u>	ORDER signed by Magistrate Judge Deborah Barnes on 7/5/2018 DENYING without prejudice petitioner's <u>2</u> request. If petitioner is unable to review this court's Local Rules at the prison, petitioner may renew this request in accordance with this order. (Yin, K) (Entered: 07/06/2018)
07/06/2018		SERVICE BY MAIL: <u>10</u> Order served on Tony Khong. (Yin, K) (Entered: 07/06/2018)
07/16/2018	<u>11</u>	CONSENT to JURISDICTION of US MAGISTRATE JUDGE by Scott Frauenheim. Attorney Means, Brian Roy added. (Attachments: # <u>1</u> Proof of Service)(Means, Brian) (Entered: 07/16/2018)
08/07/2018	<u>12</u>	ANSWER to PETITION FOR WRIT OF HABEAS CORPUS by Scott Frauenheim. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Proof of Service)(Means, Brian) (Entered: 08/07/2018)
08/24/2018	<u>13</u>	MOTION for 90-DAY EXTENSION OF TIME to file traverse by Tony Khong. (Mena-Sanchez, L) (Entered: 08/27/2018)
08/29/2018	<u>14</u>	NOTICE OF LODGING DOCUMENT IN PAPER by Scott Frauenheim: NOTICE OF ELECTRONIC LODGING OF DOCUMENTS IN SUPPORT OF ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS. (Attachments: # <u>1</u> LD 1, # <u>2</u> LD 2, # <u>3</u> LD 3, # <u>4</u> LD 4, # <u>5</u> LD 5, # <u>6</u> LD 6, # <u>7</u> LD 7, # <u>8</u> RT Vol 1 of 3, pp. 1-300, # <u>2</u> RT Vol 2 of 3, pp. 301-601, # <u>10</u> RT Vol 3 of 3, pp. 602-826, # <u>11</u> CT Vol 1 of 2, pp. 1-300, # <u>12</u> CT Vol 2 of 2, pp. 301-427, # <u>13</u> Proof of Service)(Means, Brian) (Entered: 08/29/2018)
09/04/2018	<u>15</u>	ORDER signed by Magistrate Judge Deborah Barnes on 08/31/18 GRANTING IN PART <u>13</u> Motion for Extension of time. Petitioner shall file a traverse within 60 days from the date of this order. (Plummer, M) (Entered: 09/04/2018)
09/04/2018		SERVICE BY MAIL: <u>15</u> Order on Motion for Extension served on Tony Khong. (Plummer, M) (Entered: 09/04/2018)
10/18/2018	<u>16</u>	TRAVERSE by Tony Khong. (Huang, H) (Entered: 10/19/2018)
02/25/2019	<u>17</u>	NOTICE of CHANGE of ADDRESS to PVSP, P.O. Box 8500, Coalinga, CA 93210 by Tony Khong. (Benson, A.) (Response sent: "Your traverse was received and docketed on 10/18/2018.") Modified on 2/27/2019 (Henshaw, R). (Entered: 02/25/2019)

		02/26/2019)
06/06/2019	<u>18</u>	NOTICE of CHANGE of ADDRESS to S.C.C., 5150 O'Byrnes Ferry Rd, Jameston, CA 95327 by Tony Khong. (Coll, A) (Entered: 06/07/2019)
06/10/2019	<u>19</u>	FINDINGS and RECOMMENDATIONS signed by Magistrate Judge Deborah Barnes on 6/10/2019 RECOMMENDING petitioner's <u>1</u> petition for a writ of habeas corpus be denied. Referred to Judge Kimberly J. Mueller; Objections to F&R due within 14 days. (Yin, K) (Entered: 06/10/2019)
06/10/2019		SERVICE BY MAIL: <u>19</u> Findings and Recommendations served on Tony Khong. (Yin, K) (Entered: 06/10/2019)
06/24/2019	<u>20</u>	MOTION for EXTENSION OF TIME to file objections to <u>19</u> F&Rs by Tony Khong. (Benson, A.) (Entered: 06/25/2019)
06/28/2019	<u>21</u>	ORDER signed by Magistrate Judge Deborah Barnes on 6/27/19 GRANTING <u>20</u> Motion for Extension of time. Petitioner shall file and serve his objections on or before 7/31/19. (Plummer, M) (Entered: 06/28/2019)
06/28/2019		SERVICE BY MAIL: <u>21</u> Order on Motion for Extension served on Tony Khong. (Plummer, M) (Entered: 06/28/2019)
07/22/2019	<u>22</u>	OBJECTIONS to FINDINGS and RECOMMENDATIONS <u>19</u> and APPLICATION for Certificate of Appealability by Petitioner Tony Khong. (Mena-Sanchez, L) (Entered: 07/23/2019)
09/08/2020	<u>23</u>	ORDER signed by Chief District Judge Kimberly J. Mueller on 9/7/2020 ADOPTING the findings and recommendations filed 6/10/2019, in full; DENYING Petitioner's petition for a writ of habeas corpus; and the Court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253. CASE CLOSED.(Becknal, R) (Entered: 09/08/2020)
09/08/2020	<u>24</u>	JUDGMENT dated *9/8/2020* pursuant to order signed by Chief District Judge Kimberly J. Mueller on 9/7/2020. (Becknal, R) (Entered: 09/08/2020)
09/08/2020		SERVICE BY MAIL: <u>23</u> Order & <u>24</u> Judgment served on Tony Khong. (Becknal, R) (Entered: 09/08/2020)
10/09/2020	<u>25</u>	NOTICE of APPEAL by Tony Khong as to <u>23</u> Order and <u>24</u> Judgment. (Huang, H) (Entered: 10/13/2020)
10/13/2020	<u>26</u>	APPEAL PROCESSED to Ninth Circuit re <u>25</u> Notice of Appeal filed by Tony Khong. Notice of Appeal filed *10/9/2020*, Complaint filed *3/16/2018* and Appealed Order / Judgment filed *9/8/2020*. Court Reporter: *N/A*. *Fee Status: Not Paid - Billed* Bill for fees due sent to *Tony Khong* (Attachments: # <u>1</u> Appeal Information, # <u>2</u> Bill for Appeal Fee) (Huang, H) (Entered: 10/13/2020)
10/13/2020	<u>27</u>	TRANSMITTED RECORD on APPEAL to USCA # *Pending* re <u>25</u> Notice of Appeal. *Electronic Documents: 1 to 26* (Huang, H) (Entered: 10/13/2020)
10/13/2020		SERVICE BY MAIL: <u>26</u> Appeal Processed to USCA, <u>27</u> Appeal Record Sent to USCA, served on Tony Khong. (Huang, H) (Entered: 10/13/2020)
10/15/2020	<u>28</u>	USCA CASE NUMBER 20-17032 for <u>25</u> Notice of Appeal filed by Tony Khong. (Coll, A) (Entered: 10/15/2020)
03/02/2022	<u>29</u>	ORDER signed by Chief District Judge Kimberly J. Mueller on 3/2/2022 APPOINTING Attorney David Andrew Schlesinger for Tony Khong effective 2/22/2022. (Coll, A) (Entered: 03/02/2022)
03/03/2022		SERVICE BY MAIL: <u>29</u> Order, Add and Terminate Attorneys served on Tony Khong. (Plummer, M) (Entered: 03/03/2022)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TONY KHONG,

Petitioner,

v.

SCOTT FRAUENHEIM,

Respondent.

**On Petition for A Writ of *Certiorari* to The United States Court of Appeals for
the Ninth Circuit**

PROOF OF SERVICE

I, David A. Schlesinger, declare that on March 22, 2023, as required by Supreme Court Rule 29, I served Petitioner Tony Khong's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to her, and with first-class postage prepaid.

The name, address, telephone, and email address of counsel for Respondent is as follows:

David Andrew Eldredge, Esq.
Office of the Attorney General
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944225
Sacramento, CA 94244-2550
(916) 210-7753 (telephone)
David.Eldridge@doj.gov

Counsel for Respondent

Additionally, I mailed a copy of the motion and the petition to my client, Petitioner Tony Khong, by depositing an envelope containing the documents in the United States mail, postage prepaid, and sending it to the following address:

Tony Khong
#G-32579
CRC - California Rehabilitation Center (Norco)
P.O. Box 3535
Norco, CA 92860

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 22, 2023



DAVID A. SCHLESINGER
Declarant