25-5353

No. 24A1035

IN THE

SUPREME COURT OF THE UNITED STATES

Huy Trong Tran — PETITIONER
(Your Name)

vs.

BRIAN CATES, WARDEN — 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

Huy Trong Tran #AB1640
(Your Name)

P.O. BOX 1905
(Address)

TEHACHAPI, CA 93581
(City, State, Zip Code)

N/A
(Phone Number)

LIST OF PARTIES

[X] 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:

RELATED CASES

TABLE OF AUTHORITIES CITED

CASES

ADDITIONAL CASES ATTACHED ON NEXT PAGE

STATUTES AND RULES

U.S.C.A. 8th AMENDMENT EQUAL PROTECTION RIGHTS
U.S.C.A. 14th AMENDMENT DUE PROCESS RIGHTS
28 U.S.C. §2241
28 U.S.C. §2254(d)(1)
28 U.S.C. §2254(d)(2)
28 U.S.C. §2254(e)(2)
42 U.S.C. §1983

OTHER

JIMENEZ. 1103 CAL.APP. 5TH 995
ABA 11.4.1(D)(7)(D)
ABA 11.8.3(F)(2)
ABA 11.8.6(B)(8)

TABLE OF CONTENTS

INDEX TO APPENDICES

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 _____ 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[ ] is unpublished.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 _____ 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCT. 31,2024 appear in APPENDIX A.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JAN. 24.2025, and a copy of the order denying rehearing appears at Appendix B.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including APR. 28,2025 (date) on JUNE 23,2025 (date) in Application No. 24A1035. appear in APPENDIX C

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

[X] For cases from **state courts**:

The date on which the highest state court decided my case was FEB. 1, 2023. A copy of that decision appears at Appendix D.

[ ] 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

UNITED STATES CONSTITUTIONAL 8TH AMENDMENT OF EOUAL PROTECTION RIGHTS
UNITED STATES CONSTITUTIONAL 14TH AMENDMENT OF DUE PROCESS RIGHTS

28 U.S.C. §2241 POWER TO GRANT WRIT
28 U.S.C. §2254(d)(1) application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim-
(2) resulted in a decision that was based on an unreasonable determination of facts in light of the evidencxe presented in state court proceedings

28 U.S.C. §2254(e)(2) if the applicant has failed to develop the factual basis of a claim in state court proceedings, the court shall not hold an evidentiary hearing claim unless the applicant shows that
(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense
(f) if the applicant challenges the sufficiency of the evidence adduced in such state court proceeding to support the state courts determination of a factual issue made therein, the applicant..., if able, shall produce that part of the record pertinant to a determination of the sufficiency of the evidence to support such determination

42 U.S.C. §1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS

STATEMENT OF THE CASE

Petitioner presented a mitigation evidence of Forensic Psychologist Dr. Brodie. Petitioner argument/claim that there is new evidence corroborating defense of insufficient evidence of deliberate and premeditated attempted murders. Dr. Brodie states, "Cognitive Ability and Decision-Making Capacity, In consideration of the controlling offense, Mr. Tran's ability to think rationally was clearly impaired and his decision-making capacity was compromise. (Exhibit A,p.7) and Mr. Tran's sustained drug use was a significant contributor to the controlling offense, but an additional contributing facotr was the immaturity and naivete of his young mind."(Exhibit A,p.8)

When it came to capital cases it is mandatory that ther is a investigation of mitigation evidence and its presentation. Whereas there is not for non-capital cases violates Equal Protection Rights and Due Process. Had it been extended that right to investigate and present mitigatin evidence. petitioner would not have got convicted and sentenced to 27-years-to-life for defending self and being under the influence not having the required mens rea for deliberate and premeditated attempted murders. All youth offenders that are facing lengthy or life sentences deserves that right for investigation of all mitigation evidence and its contributing factors to be presented.

REASONS FOR GRANTING THE PETITION

Lower courts denial of petition which was contrary to all courts rulings applying unreasonasble applications of law of the land. Had courts accepted petitioners' mitigation evidence and ruled on its merits would see that there is reasonable doubt to applicants case in its entirety weighing it against the aggravating factors. Which none of the lower courts gave a thorough thought and chance to applicant. Showing of Equal Protections violations mitigation evidence not being taken, reviewed, and weighed against at any stage. Which corroborated applicants claim of insufficient evidence of deliberate and premeditated attempted murders where petitioner lacked the required mens rea to get convicted.

Evidenced in a Board Certified American Psychologist Association member making an assessment and evaluation of petitioner having multiple psychological disorders cataloged in the Diagnostic Statistic Manual-5-TR by the American Psychological Association. Where the disorders were a contributing factor to the crime. Yet none of the lower courts ruled upon its merits and denied it and said to pursue it in a 42 U.S.C.§1983 conditions of confinement suit and that its not a core habeas corpus issue... Petitioner begs to differ.

Thus demonstrating prejudice entitled to have judgment against petitioner reopened under Rule 60(b)(6). Challenges reviewed for abuse of discretion during a merits appeal. see **11 C.Wright. A.Miller. & M.Kane. Federal Practice and Procedure §2857(3d.ed.2012)**. Rule 60(b) which permits a court to reopen a judgment for "any other reason that justifies relief." Rule 60(b) vests wide discretion in courts. but we have held that relief under Rule 60(b) is available only in "extraordinary circumstances." **Gonzalez, 545 US at 535.** In determining whether extraordinary circumstances are present, a court may consider a wide range of factors. These may include, in an appropriate case, "The risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." **Liljeberg v. Health Services Acquisition Corp.486 US 847,864.**

For these reasons request the Court setting new case precedents and to Grant the petition reviewing it that it is a core habeas corpus issue and lower courts were unreasonable to deny the merits and claiming it to be a conditions of confinement issue pursuant to 42 U.S.C. §1983. The other reason is that it is mandatory for capital cases for mitigation evidence to be investigated and presented and not for non-capital cases, that it is a due process and equal protection rights violation not extending it to non-capital cases where youth offenders like petitioner facing lengthy to life sentences.

In order to maintain the "public perception of fairness and integrity in the justice system," moreover, courts must "exhibit regard for fundamental rights and respect for prisoners'as people" **Rosales-Miresles v. US,585 US 129 (quoting T.Tyler, why people obey the law 164)**) That requires considering debatable constitutional claims on their merits, rather than dismissing them out of hand.

REPEATED DENIALS OF MITIGATION EVIDENCE OF STATE RETAINED FORENSIC PSYCHOLOGIST TO CORROBORATE INSUFFICIENT EVIDENCE CRIMINAL CASE, HOW DOES THIS CLAIM FALL OUTSIDE "THE CORE OF HABEAS CORPUS ISSUE"?

Petitioner requests the Court to decide and review on the important issue beyond the particular facts and parties involved. Making mitigation investigation and presentation of evidence mandatory. It will contibute to the development of national law making precedence, especially in cases where individuals face decades and possible life and life without imprisonment convictions and sentences. Considerations is of importance to the public of this issue. It especially relates to youth related factors, trauma, and contributing factors in commissioned offense, in mitigating evidence showing of insufficient evidence lacking the mens rea. Should be settled by this Court having jurisdiction because it conflicts with this court and all lower courts in the nation, that this issue is a "core habeas issue" from criminal case and barred from 42 U.S.C.§1983 suit and not having to do with the conditions of confinement as Ninth Circuit Court said to pursue just to deny petition as moot. This relief can only be obtained from United States Supreme Court and setting case law precedence, just like Avers v. Belmontes, 549 U.S. 7 claim of 8th Amendment Rights to present all mitigation evidence in a capital sentencing proceedings. Petitioner requests Court to extend this right to every person fighting for their rights, life, and liberty, thus not doing so violates the Constitutional Equal Protection Amendment Rights.

Petitioner practice due diligence presenting mitigation evidence as soon as recieving it filing petitions, repeatedly got denied, never upon its merits. And especially not given a chance for further evidentiary hearing process to prove further. In McKinney v. Arizona, 589 U.S. 139, the Ninth Cir. Court held on habeas review that the Arizona Courts violated Eddings v. Oklahoma, 455 U.S. 104, by failing to properly consider as relevant mitigating evidence McKinney's post-traumatic stress disorder.

Just because petitioner's case is not a capital case and does not have same clout it was denied review ignoring mitigating evidence presented, where in capital cases mitigation evidence is a must be investigated, given, and heard upon. Petitioner had no meaningful opportunity or chance to have mitigation evidence to scale between the aggravating evidence for relief. Doing so violates petitioners Equal Protection Rights and Due Process. Just like in **Ryan v. Jones, 2011 U.S. Lexis 2987** the newly presented mitigation evidence would necessarily overcome the aggravating circumstances. Had been given a(n) evidentiary hearing for further development of the mitigating evidence Dr. Brodie expert witness forensic psychologist claim "Mr. Tran's decision-making capacity was compromised" (EXHIBIT ,P.7) and cognitive impairment during the commission of offense therefore lacking the prerequisites for said mens rea intent and malice to deliberate and premeditate. California Courts had already heard testimony that petitioner was with Ms. Ho(ex-girlfriend) that day of offense, being under extreme emotions of the love triangle and defending self from assailants. State and federal courts has refused still to give weight and scaling of the mitigating evidence that was hired by government "establishing a casual connection and nexus between impairment and conduct on the night of the assault". Petitioner new mitigation evidence fixes this issue and problem providing Dr. Brodie's evalultion and assessment link between the lack of mens rea in intent and malice to attempt to murder, that there was diminished capacity and youth related traumas and factors.

Ninth Cir. Court denying petition and COA that it was moot. Petitioner begs to differ it could either be open to question, should be brought up for discussion, and has practical significance. All the lower courts intentionally took steps to impede the petitions to proceed forward and getting its full and proper review, thus the raised claim not only

establishes cause and prejudice from getting relief this error obscured by lower courts was not harmless error and was highly prejudicial. Not having fair and just proceeding at any stage on post-conviction relief courts. The denials from lower courts that its not cognizable issue and to file a suit under conditions of confinement were unreasonable applications of law. These errors "worked to petitioner's actual and substanial disadvantage".

Petitioner's mental conditions constitute persuasive evidence in mitigation evidence because it bears in relationship to petitioner's abnormal behaviors never seen before or ever had a violent history thereof.'(the trial court even stated so exhibit 2RT 411-414). When a court When a court is likely to find an aggravating factor that would make the life sentence mandatory in absence of sufficient counterbalancing mitigation evidence, failure to make a strong mitigation case falls short of fair and just proceedings, showing that trial counsel provided no witness or evidence. When sole defense was petitioner testimony of drug use to show that there was insufficient evidence to premeditate. Under Schiriro v. Summerlin,542 U.S. 348 professional standards therefore required a crimianl defense counsel to present a strong mitigation case. All of the state and federal lower courts decisions unreasonable application satisfying prong of 28 U.S.C. §2254(d)(1) there was unreasonable justification to the dismissals and denials of the mitigation evidence provided to negate the conviction, sentence, trial proceedings and post-conviction relief proceedings. For puroses of §2254 analysis, lower court unnecessary and unreasonably determines the facts when it overlooks or ignores evidence that is highly probative and central to petitioners' claim. Evidence is "suffiently probative or central" if it is sufficient to support claim when considered in the full context of the records bearing on the issue presented in petitions.

Not only has there been a significant intervening change in the law in clearly established federal youth offender precedence in Miller v. Alabama 537 U.S. 460; Graham v. Florida, 560 U.S. 48 having retroactive affect. An evidentiary hearing should be held to assess the significance of petitioner's youth under current state and federal case laws of deciding guilt and consideration of guilt and their traumas, not fully formed brain development and because the lack thereof stunted development due to years of drug abuse. Whether the courts properly considered petitioner's brain development in finding guilt was not raised or decided in any prior proceedings. As the Court has stated, "there is a belief by this society, that defendants who commit criminal acts that are attributable to a disadvantage background or to emotional and mental problems maybe less culpable than defendants who have no such excuse. Boyd v. California, 494 U.S. 370,382 (1990). Therefore, it is imperative that all relevant mitigating information be unearthed for consideration at the capital sentencing phase. Stewart v. wallace, 528 U.S.1105. Classic mitigation evidence includes mental disordersr, mental impairments, family history, abuse, physical impairments, and substance abuse. Sanders v. Davis, 2022 U.S. APP. Lexis 1019; Schiriro v. Summerlin, 542 U,S, 348, see also Terry Williams, 529 U.S. at 396.

Under the Diagnostic and Statistical Manual of Mental Disorders Text Revision (DSM-5-TR) by the American Psychiatric Association(2022), it catalogs that trauma and stress-related disorders (DSM-5 TR, p.295-328) and substance-related and addictive disorders (DSM-5 TR,p.543-665) as now mental disorers. Petitioner asks the Court to determine whether the conviction was obtained in violation of the IN RE WINSHIP,397 U.S. 358, by asking "whether, after viewing the evidence in light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" Jackson v. Virginia,

supra at 319. Even in latest California case law Jimenez, 103 Cal.App.5th 995(2024) it was not harmless when the mitigation evidence and its youth related factors were omitted. Evidence of "stunted brain developmental issues" was the start of traumatic events and very early drug abuse and alcohol abuse problems since the age of 12 years old and it did not persist till offense. Youth traumas more than often operate in tandem together amount to classic mitigation circumstances. When these different pieces of mitigation evidence fit together into an internally coherent and compelling narrative whole.

Petitioner's arguments is that relief is granted in all the above cases with new mitigation evidence to support thier petitions in capital cases, request Court to extend the mandatory criminal procedure to non-capital cases a Equal Protections Rights. So that petitioner could further present evidence provided at an evidentiary hearing. Petitioner had not had opportunity or given a chance the first time around when petitioner raised claim of "Ineffective Assistance of Counsel Failure to Retain Expert Witness" in Tran v. Harrington, 9th Cir.#13-55640. Arguments that petitioner tried to get vacated because counsel did not present no evidence of any kind or witnesses to corroborate his argument of insufficient evidence of premeditation due to lack of mens rea of drug use for defense. With previous 9th Cir. case # 13-55640 having had assistance for post-conviction proceedings arguing GRANTED COA on Ineffective Assistance of Counsel Failure to Retain Expert Witness. Petitioner would have been granted relief had petitioner have this recent mitigation evidence of DR. Brodie's testimony (EXHIBIT ,p.7-9). But this court denied in short "who knows what expert would sav". Nowithis Court knows exactly what expert states for such testimony and in mitigation evidence. Petitoner repeatedly tried to request for evidentiary hearing to further develop evidence of mitigating evidence and factors. Now that petitioner finally has an expert witness to corroborate issues and claims is

still being further denied. Dr. Brodie stated, "Cognitive Ability and Decision-Making Capacity, In consideration of the controlling offense, Mr. Tran's ability to think rationally was clear impaired and his decision-making capacity was compromised",and "It is my opinion that his actions in the controlling offense were strongly influenced by his drug use..." (EXHIBIT ,p.7-9). This mititgating evidence is a clear and convincing evidence that petitioner having the burden of presumption proven. Now that petitioner finally having expert statement and testimony corroborating all claims in previos and present petition, lower courts gave unreasonable decisions and opinions that it is not a "core habeas issue and to raise it in §1983 suit under conditions of confinement (order of 9th Cir. in Doc.6.1)

Prosecution had the burden to prove beyond a reasonable doubt that the attempted murders were done with malice and intent there was no evidence of such nor an expert for the government to prove in doing so. Prosecution even told the jury during closing argument that "and the intent that's imporant is at the time that the action is performed, what is the mental state. Everything else here are general intent crimes, meaning you have to have intended to do the action..."(2RT,p.298-99). As stated before with throughout closing argument all of her evidence was all hearsay testimony of an alledged incedent with no evidence it ever occurring to convince and persuaded jury to convict with premeditation of attempted murders without anyone ever getting hurt(2RT,p.307-19).

With trial counsel his sole argument with no expert to corroborate defense, during closing argument stated, "What we're talking about is whether Tommy felt concerned, whether he felt fear and anger, whether his mental state and intentions were affected by his drug intoxication(2RT,p.330,lines 9-12). As mentioned earlier of counsel's securing experts where it is necessary or appropriate for presentation of developing at all previous stages of expert witness mitigation evidence and in support of insufficient evidence of the premeditated attempted murders

and to also corroborate petitioner's prior claim on previous 9th Cir.case#13-55640. "Tantalizing indications in the record suggests that certain mitigating evidence maybe available, those leads must be pursued."(Lambright,490 f.3d at 1117(quoting Stankewitz I, 365 f.3d at 719-20);see Wiggins, 539 U.S. at 527)

The 1989 American Bar Association (ABA) guidelines provide that an attorney should secure the assistance of experts where it is necessary or appropriate for presentation of mitigation. 1989 ABA guidelines at 11.4.1(D)(7)(D). According to the 1989 guidelines, counsel should consider enlisting experts to provide medical, psychological, sociological, or other explanations for the offense(s) for which the client is being sentenced and to give a favorable opinion as to the client's capacity for rehabilitation. 1989 ABA guidelines at 11.8.3(F)(2). In addition, counsel should consider presenting expert testimony concering the defendant's medical, family, and social history and the resulting impact on the client, relating to the offense. 1989 guidelines at 11.8.6(B)(8).

The only way to do this is through a judicial review and hold a(n) avidentiary hearing. In Jackson,supra, "the court reasoned: This familiar standard gives full play to the resposibility of the trier of fact fairly to resolve conflicts in the testimony , to weigh the evidence and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged the factfinder's role as weigher of the evidence is to be considered in the light most favorable to the prosecution."(Id.443 U.S. at 319). Where a court conclusions that the determination were unreasonable in light of evidence. Because of this available expert or any expert evidence that counsel failed to obtained and presented would have provided a powerful explanation of offense, there was a reasonable probability that petitioner would have recieved a sentence less than 27 years to life for defending self instead of 1st degree premeditated

ted and deliberate attempted murders, had counsel obtained expert and presenting experts mitigation evidence.

Cullen v Pinholster, 583 U.S. 170,183-84, "state courts decisions are measured against this court's precedents as of the time the state courts renders its decision." Lockyer v. Andrade, 538 U.S. 63, 71-72. To determine whether a particular decision is "contrary to" then-established law, a federal court must consider whether the decision "confronts [the] set of facts" that were before the state courts. Williams v. Taylor, 522 U.S. 362, 405-06.. If the state-court decision "identifies the correct governing legal principles." In existence at the time, a federal court must assess whether the decision "unreasonablely applies that principle to the facts of the prisioner's case." Id at 413.

Claims involved a contrary established law of the land a cognizable federal claim determined by Jackson v. Virginia, 443 U.S. 307, by the U.S. Supreme Court there is insufficient evidence to find that petitioner had formed the required mental state to charge, convict, and sentence a person beyond a reasonable doubt. Petitioner was not afforded the Fundamental Rights to Due Process this observance of the bedrock procedural elements that were absolutely prerequisite to Fundamental Fairness implicit in the concept of ordered liberty, it also violates petitioner Equal Protection Rights; "It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitue a denial of due process. These standards no more than reflects a broader premise that has never been doubted in our constitutional system: that a person cannot incur the loss of liberty for an offense without notice and meaningful opportunity to defend, if not the right to a trial itself, presumes as well that total want of evidence to support a charge will conclude the case in favor of the accused. Accordingly. a conviction based upon a record wholly devoid of any relevant evidence of a crucial element

of the offense charged is constitutionally infirm. The "no evidence" doctrine thus secures to an accused the most elemental of due process rights: Freedom from a wholly arbitrary deprivation of liberty." Jackson,supra,HN4: Lewis v. Jeffers,497U.S. 764.

Lewis v Jeffers, 497 U.S. 764: Because federal habeas review of a state court's application of a constitutionally narrowed aggravating circumstances is limited, at most, to determining whether the state courts finding was so arbitrary or capricious as to constitute an independent due process or equal protection rights violation.DONNELLY V. DECHRISTOFORO 416 U.S. 637,642-43,"absent a specfic constitutional violation, federal habeas review of trial error is limited to whether the error "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Sentencing court and lower federal court denied petitioner's fundamental due process rights by not considering the mitigation evidence of a(n) forensic psychologist expert witnesses evaluation and assessment which was provided by own government, the court to consider the totality of the available mitigation evidence - both that adduced at trial(which was not provided), and this now evidence being adduced throughout the habeas proceedings and to weigh it against the evidence in aggravation evidence from prosecution. if there is a standard it will necessarily require a court to "speculate' as to the effect of the new evidence regardless of how much or how little mitigation evidence was presented during any of the proceedings. This failure to conderation of the claim, itself of contributing factors presented in mitigation evidence was a miscarriage of justice. see COLEMAN V THOMPSON, 501 U.S. 722. As the evidence presented in these post-conviction relief proceedings that there is insufficient evidence to convict petitioner evidence in JACKSON,supra.

Or at the very least to grant a Certificate of Appealability (COA) remand back to lower courts to reflect the substantive standards that govern the

habeas appeals. Afterall, a COA must issue so long as "reasonable jurists could debate whether... petition should have been resolved in a different manner or that the issues presented were' "adequate to deserve encouragement to proceed further." quoting SHOCKLEY V. VANDERGRIFF, 145 S.CT 844,896: quoting SLACK V . MCDANIEL, 529 U.S. 473,484. Because appeals should proceed so long as they present a debatable issue, the question whether to grant a certificate should not be a contentious one. see; BUCK, 580 U.S. at 122; MILLER-EL, 537 U.S. at 336; SLACK, 529 U.S. at 484. Indeed a petitioner need not even prove "That some jurists would grant the petition for habeas corpus." MILLER-EL, 537 U.S. at 338. In order to maintain the "public perception of fairness and integrity in the justice systen," moreover courts must " exhibit regard for fundamental rights and respect for prisoner's as people." ROSALES-MIRELES v. U.S., 585 U.S. 129; quoting T. Tyler, Why People Obey The Law 164(2006). That requires considering debateablte constitutional claims on their merits, rather than dismissing them out of hand.

Thus, involved an unreasonable adjudication of claim contrary to clearly established law of the land pursuant to 28 U.S.C.§2254(d)(1), as determined by the Supreme Court of United States. Errors that rose to the levels of multiple U.S. Constitutional Amendment Righs Violations of 5th, 8th, and 14th denials of due processes and equal protections not allowing or accepting mitigation evidence of Dr. Brodie's professional expert psychological evaluation and assessments opinion evidence in (EXHIBIT ,p.7-9); (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. These factual predicates of the mitigation evidence were never considered, evaluated, or ruled upon its credible merits from hired government expert witness.

The standard for review is critical in this case and that is being presented the inquiry on review at the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. Instead, the relevant questions is whether, after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime charged and convicted beyond a reasonable doubt? Similarly, a fact-finding process maybe fatally undermined where the state courts plainly misapprehend or misstate the record in making their findings, and the misapprehension goes to a material factual issue that is central to petitioner's claim. And likewise, a fact-finding processbe deemed defective when the end result requires the court to make a finding on an unconstitutionally incomplete record. For a petitioner to prevail on these tyes of 28 U.S.C. §2254(d)(2) arguments, however, the appellate court must be satisfied that any court whom the defect is pointed out would be unreasonable in holding that the state courts fact-finding process was adequate.

Whereas a jury or judge presiding can use its common sense or own sense of mercy, to understand the psychological impact of childhood trauma and drug abuse, a sentencer would likely need expert testimony to understand how a traumatic childhood and drug abuse would shape the brain development in a way that would lead to impulsive behaviors. This expert testimony now proves that in previous 9th Cir. case #13-55640 that trial counsel failed to retain, present, and obtain mitigation evidence from expert of petitioners lack of impulsive actions and emotional control, prejudiced petitioner where the expert's testimony and mitigation evidence could directly counter the offense that was charged, tried, convicted, and sentenced.

However,the ultimate focus is on whether the new evidence was "Sufficient to undermine confidence in the outcome" which is different fonn "the preponde-

rance more-likely-than-not standard" LAMBRIGHT, 490 f.3d at 1121(quoting SCHIRIRO V SUMMERLIN542 U.S.348) Counsel failed to investigate the case and retain an expert for trial, thus rendering deficient performance Prejudiced is established by the fact that the petitioner is serving a LIFE sentence as being initially the victim from assault by aggressor turned victim Mr. Hernandez in the first instant unproked from petitioner and confronted, chased, threatened to kill by Hernandez(aggressor turned victim). Notably, this case is similar to that in HOWARD V. CLARK,608 f.3d 563, where the court held that the "prosecutions case was not strong" against the defendant. The facts plead in the petition habeas applications established the same, and more so, that the premeditated attempted murders is insufficient in having no evidence to sustain the conviction. Due Process protections are in mandated here. As recently cited in HAMDI V. RUMFELD, 542 U.S. 507 "it is clear that committment for any purpose constitutes a significant deprivation of liberty that requires due process protection", JONES V UNITED STATES, 463 U.S. 354,361.

Petitioner was inititally the victim, being confronted, chased, threatened, and assaulted. Where petitioner retaliated by branding firearm and shooting at Mr. Hernandez. There was no evidence of premeditation and no prior altercations where petitioner assauted victim with firearm. Prosecution kept referring to to it and painted the jurors minds with a prior act that supposedly happened with no evidence of it and got a conviction of premeditated attempted murders.

Therefore there was insufficient evidence to convict petitioners showing and in corrobation with Dr. Brodie's psychological evaluation of the mitigation evidence presented in this petition.

HOW IS THIS MITIGATION EVIDENCE A §1983 CIVIL SUIT CONDITIONS OF CONFINEMENT ISSUE AND NOT A CORE HABEAS CORPUS ISSUE? NINTH CIRCUIT SAID TO PURSUE 42 U.S.C. §1983 JUSTIFICATION FOR DENIAL AS MOOT AND NOT UPON ITS MERITS. UNREASONABLE APPLICATION AND CONTRARY TO THE LAW OF THE LAND

Petitioner initially had 3 claims, 2 were of prison disciplinary which were dropped when petitioner filed reply to recommendation in district court and to proceed with this single claim of the insufficient evidence in the new never presented on trauma, youth related contributing factors in the mitigation evidence of criminal case.

Habeas corpus is the proper vehicle for said claim and supported by mitigation evidence. Petitioner cannot bring said claim in §1983 suit, it has nothing to do with conditions of confinement as 9th Cir. Court order in Doc.6.1 says to do so, that it is the proper filing. Its matters to do with pretrial, conviction, and sentencing, that the mitigation evidence does corroborate that there was insufficient evidence that there was no intent or malice to premeditate in the attempted murders. Which the Court held that §1983 remained avaialable for procedural challenges where success would not necessarily spell immediate or speedier release for prisoners, but that the prisoners could not use §1983 to obtain relief where success would necessarily demonstrate the invalidity of their confinement or its duration.This is not the situation here petitioner is trying to obtain relief and if given relief then petitioner's conviction of criminal case would be reversed that would release petitioner immediately after having served now 18 years for defending self. This issue is barred from §1983 suit and can only be ruled upon on habeas corpus, after lower courts decisions this court has the ultimate jurisdiction review de novo under 28 U.S.C. §2253(c) makes insubstantial showing of the denial of constitutional rights of petitioner, having met all statue of limitations exhausting remedies.

Petitioner challenging the facts and duration of an invalid conviction and illegal physical confinement of life term not and to make petitioner's case law precedence criminal procedure mandatory mitigations evidence for non-capital cases. Had the jurors and court heard this mitigation evidence it would have came up with different conclusion. The petition is NOT challenging its conditions of confinement. So therefore, it is at the very core of habeas corpus issue and proceedings governed by §2254 subject to the restrictions set forth therein.

Only avenue to remedy violations of federal constitutional rights is upon habeas corpus under 28 U.S.C. §2254 and NOT a 42 U.S.C.§1983. The United States Supremem Court has addressed the extent to which §1983 is a permissible alternative to traditional remedy of hageas corpus and has held that §1983 implicity excludes from its coverage claims that the issue is within core of habeas corpus. The court has rested this conclusion on its observation that the language of the habeas statue is more specific instrument to obtain release from unlawful confinement., Thus a person who is in state custody may not use §1983 to challenge the very fact or duration of confinement by seeking a determination that he is entitled to immediate release or speedier release from that imprisonment, as petitioner is doing in this petition with the Supreme Court. This Court has elaborated on the exception set forth in PREISER V. RODRIGUEZ, 411 U.S. 475, HN 11 holding that a state prisoner may not maintain §1983 claim for damages of a judgement in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence with respect to a prior judgement that has been nullified previously.

From petitioner's understanding this issue and claim is cognizable in habeas and not in §1983 suit. Thus, the fact that a §2254 issue and is in custody therefore may file a habeas corpus petition challenging the unlawfulness of the conviction, sentence, and custody does by itself determine whether the 28 U.S.C. §2254 claim and its remedy available. The cl-

aim that meets the statutory criteria of §1983, because being asserted its success would release the petitioner from confinement immediately or shorten its duration, or would neccessarily imply the invality of the conviction or sentence like a §2241 and §2254 would. Which was the cause of restraint of liberty.

A 42 U.S.C.§1983 action is a proper remedy for a prisoner who is making a constitutional challenge to the conditions of his confinement orcustody thereof. This is not the issue here and petitioner claim based upon facts and the validity of the confinement, justifying that the claim is a cognizable issue of core habeas corpus, which petitioner has exhausted all the state and federal prerequisites for the land highest court review de novo. This distinction between the "fact" and "duration" of imprisonment, on the one hand, and the "conditions" of imprisonment, on the other hand is a distinction that United States Supreme Court precedent has created: a prisoner may challenge the "fact" or "duration" of imprisonment only through habeas corpus proceedings, but may challenge "conditions" of confinement in an action under §1983. Petitioner had sought §1983 suit, it would have been dismissed with prejudiced immediately without ever reaching upon its merits or given any type of relief, as it has been doing.

The concern with the matter at hand is based on upon longstanding federal jurisprudence regarding habeas corpus relief and the necessity of an evidentiary hearing. The matter involves a question of exceptional importance regarding the disposition of the state and federal habeas corpus relief without allowing the petitioner to present and prove disputed fact that support claim for relief. Consideration is necessary to secure and maintain uniformity of the courts decisions and to ensure compliance with federal law regarding habeas relief. In the instant matter, at a minimum, the facts regarding mitigation evidence can not be resolved without holding an evidentiary hearing and the new evidentiary mitigation evidence that corroborates all past and present claims. The resolu-

of the §2254 claims without an evidentiary hearing is an abuse of discretion, and is contrary to the Supreme Court's relevant decisions in WALKER V. JOHNSTON, 312 U.S. 275,286 ("if the petition, the return, and the traverse raise substantial issues of fact, it is the petitioner's right to have those issues heard and determined in the manner the statue prescribes.")Machibroda v. United States, 368 U.S. 487,496("Improbable or unbelievable as [the petitioner's] assertions may be,...there must be hearing at which [petitioner] is present and at which he may both call and examine witnesses.");Waley v. Johnson, 316 U.S. 101,104("A prisoner's allegations must be heard though they may 'tax credulity.'"):Sanders v. United States, 373 US 1, 20("Where the facts on which petitioner's claim...is predicated are outside the [original trial] record, the record cannot conclusively show, as the statue requires, that there is no merit in the claim[raised]." Fontaine v. U.S. 411 US 213(It is equally clear that §2255 calls for a hearing on such allegations unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief...");Townsend v. Sain,372 US 293("The appropriate standard -- which must be considered to supersede, to the extent of any inconsistencies, the opinions in Brown v. Allen,344 US 443 is this: where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of the trial or in a collateral proceeding. In other words a federal evidentiary hearing is required."); HARRIS V. NELSON,394 US 286(Accordingly, the procedures surroundin an evidentiary hearing, of the facts relevant to disposition of a habeas corpus petition," and habeas recieve a "full opportunity for presentation of the relevant facts."); [citing] HARRIS V. NELSON 394 US, at 298) and as recently as HAMDI V. RUMSFELD, 542 US 507, holding "As we have discussed, a habeas court in a case such as this may accept affidavit evidence like that contained in the Declaration, so long as it also permits the alleged combatant to present

his own factual case to rebut the Government's return" The HAMDI Court went to explain;("An essential principle of Due Process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case'" (quoting ~~MULLANE V. CENTRAL HANOVER BANK & TRUST C.~~ INC., V. CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CAL.,508 US 602,617(due process requires a neutral and detached judge in the first instance'"(quoting WARD V. MONOEVILLE,409 US 57,61-62). "For more than century the central meaning of procedural due process has been clear; 'Parties whose rights aare to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" FUENTES V. SHEVIN, 407 US 67, 80(quoting BALDWIN V. HALE, 1 Wall. 223,233(1864); ARMSTRONG V. MANZO, 380 US 545,552(other citations omitted)). These essential constitutional promises may not be eroded.

As explained in filed petitions herein, low Court's opinion in Howard v. Clark, 608 f.3d 563(9thCIR) sets the stage in this matter: "see 28 U.S.C. §2254 (e)(2); Cooper-Smith v. Palmateer, 397 f3d 1236,1241(9thCIR) ("The conditions of §2254(e)(2) generally apply to petitioners seeking relief based on new evidence, even when they do not seek an evidentiary hearing."). We do not decide this issue since the parties have not briefed it. However, we note that we have previously ruled the where...the state court simply fail to conduct an evidentiary hearing, [section 2254(e)(2)] does not preclude a federal evidentiary hearing on otherwise exhausted habeas claim.." JONES, 114 F.3d at 1013

Petitioner requests this Court to answer the question of exceptional importance of law in this matter and to vacate the panel opinion and remand to the district court with instructions to convene an evidentiary hearing in this matter and resolve the haveas claims on the merits. District court and state courts never have ever made decision upon merits nor weigh the aggravating factors against the mitigation evidence. Ninth Circuit

Judge Rawlinson and Bennett denied claims that it was a "falling outside core habeas" and to file a §1983 suit instead, and also instead of reviewing the de novo claim and in considering the mitigation evidence that points to insufficient evidence to sustain a conviction presented therein upon request for rehearing denied it to be moot.

Petitioner hereby request the court to consider the mitigation evidence that is being presented, reweighing the evidence against the aggravating evidence in totality of the available mitigating evidence, whether there is at least a reasonable probability that development and presentation of mental health expert testimony would have overcome the aggravating factors and changed the results of the sentencing proceedings. Demonstrating violation of Due Process and Equal Protection had presentations of contributing factors would have dramatically affected any sentencing judge's preception of petitioner's culpability of the crime. Judge even stated at sentencing, "The situation here is nothing short of tragic. I do think that Mr.Tran acted differently than he would have because of the drugs that he was taking and as a result, a lot of things, I think, fell apart in his life. A lot of things fell apart in his life. And on that day, as I said, he made some choices that maybe he wouldn't have made had he been clean and sober,..."(2RT,p.411-414).

Petitioner asks these two important questions that is presented, (1)REPEATED DENIALS OF MITIGATION EVIDENCE OF STATE RETAINED FORENSIC PSYCHOLOGIST TO CORROBORATE INSUFFICIENT EVIDENCE CRIMINAL CASE, HOW DOES THIS CLAIM FALL OUTSIDE "THE CORE HABEAS CORPUS ISSUE"? (2)HOW IS THIS MITIGATION EVIDENCE A §1983 CIVIL SUIT CONDITIONS OF CONFINEMENT ISSUE AND NOT A CORE HABEAS CORPUS ISSUE? NINTH CIRCUIT SAID TO PURSUE 42 U.S.C. §1983 JUSTIFICATION FOR DENIAL AS MOOT AND NOT UPON ITS MERITS. UNREASONABLE APPLICATION AND CONTRARY TO THE LAW OF THE LAND.

Requests that the Court to GRANT REVIEW that

the lower habeas court employed a defective fact-finding process when it denied petition and for further effectively presenting development of a mitigation evidentiary claim. The lower courts failure to hold a hearing of claim and denial of certificate of appealability or reviews resulted in an unreasonable determinations of facts.

Court should take take this case upon review just like this court's decision in JONES V. RYAN, 52 F.4TH 1104(2022);(1)to secure and maintain uniformily in our case law;(2)because this case involves issues of exceptional importance(whether to deny the fundamental rights of mitigation evidence to support defense); and (3)so that the Supreme Court, which had already vacated lower court's judgement once in JONES,SUPRA and wishes This Court to do so same with petitioner. To rest the unjust with liberty being returned. Deeming in the interest of justice for petitioner in these arguments in this petition. Petitioner believes has made the required substantial showing of the denial of constitutional rights of Due Process and Equal Protection. A 'reasonable jurist' could debate the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further (with Dr. Brodie's psychological evaluation and assessment expert opinion in EXHIBIT ,p.7-9) had it been adduced at trial, jury to hear and debate over. quoting Slack v. McDaniel, 529 US 473, 484,quoting Barefoot v. Estelle, 463 US 880,893.

Because all above arguments petitioner liberty interest is at stake due to loss of liberty, life, freedom, due process of law, equal protection, and the pursuit of happiness is jeopardized needs this Court's Review Granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

HUY TRONG TRAN

Date: ~~6/6/25~~ 8/3/25