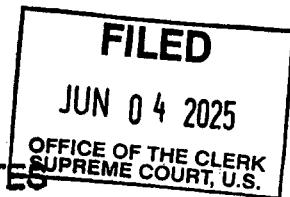


No. \_\_\_\_\_

ORIGINAL

25-5613

IN THE  
SUPREME COURT OF THE UNITED STATES



Andres Serrato Garnica — PETITIONER  
(Your Name)

vs.

Ryan Thornell — RESPONDENT(S)  
(Attorney General)  
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 9th Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

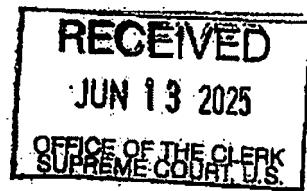
PETITION FOR WRIT OF CERTIORARI

Andres Serrato Garnica  
(Your Name)

1752 E. Arica Rd.  
(Address)

Elay, AZ, 85131  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)



QUESTION(S) PRESENTED

- A. Did the District err in dismissing the Writ of Habeas Corpus and not issuing a C.O.A on Hearsay Statements as to State of Mind of alleged victim's wife?
- B. Did the Appellate Court and the District Court err in not granting relief on petitioner's involuntary statement made to police, or not granting a C.O.A to be heard on this matter?
- C. Did the District Court err in denying the Habeas Corpus on the Ground that the Crime Scene was Contaminated?
- D. Did the District Court err on the sufficiency of Evidence by Fingerprints from the petitioner was not found on the Murder Weapon?

## 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:

## RELATED CASES

Crawford vs. Washington  
Miranda vs. Arizona

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## STATUTES AND RULES

28 U.S.C. § 1257

28 U.S.C. § 2254 (d)(1)(d)(2)

## Constitutional Provisions Involved

### OTHER

United States Constitution, Amendment. ....  
 United States Constitution, Amendment. ....  
 United States Constitution XW. ....

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 D to the petition and is

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 is unpublished.

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

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 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix B 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 Superior Court court appears at Appendix A to the petition and is

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

1.

6.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 4/2/2025.

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: 4-17-2025, and a copy of the order denying rehearing appears at Appendix E.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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

### United States Constitution, Amendment V:

No Person shall be held to answer for a Capital or otherwise infamous Crime, unless on a presentment or indictment of a Grand Jury, except in cases in the land or naval forces, or in the Militia, when in actual service in time of War or Public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

### United States Constitution VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial Jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in favor and to have the assistance of counsel for his defense.

### United States Constitution XIV § 1

All persons born or naturalized in the United States and subjected to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

The right of a state prisoner to seek Federal habeas corpus relief is guaranteed in 28 USC § 2254. The standard for relief under AEDPA is set forth in 28 USC § 2254 § (d)(1)(d)(2).

## STATEMENT OF THE CASE

I. As a result of a Jury trial the defendant Andres Serrato Garnica was found guilty of Second degree Murder and was Sentence to 25 years in the Department of Correction on an aggravated sentence. The defendant filed a timely notice of Appeal and the Court of Appeals Affirmed his convictions in NO.CA-CH 17-0483 on 1-10-2019, The defendant also filed a notice of Post conviction relief and that Court denied relief. The defendant also appealed to the Arizona Court of Appeals and that court granted review but denied relief. The defendant then sought a Writ of Habeas Corpus and they also denied relief as well as a COA Certificate of Appealability.

## FACTS AND STATES THEORY

On the afternoon of November 27, 2015 Andres Garnica and his wife Mariliza Pallafox, were packing into a U-haul truck all their belongings in preparation to move to California the next day. During this time, Andres Garnica enlisted the victim Joshua Luck's to help with loading heavier items into the U-haul.

Ms. Pallafox kept her distance from victim Mr. Luck as he assisted the defendant. She was concerned that the defendant would become jealous and upset. Andres Garnica usually displayed jealous behavior during their relationship.

The defendant and the victim Mr. Luck loaded the furniture into the truck, Ms. Pallafox packed boxes in one of the bedrooms and Ms. Pallafox had their children with them in the bedroom. At one point Ms. Pallafox left the bedroom and started walking toward the kitchen with her two children, she then heard two gun shots, Ms. Pallafox then hurried and put the children back into the bedroom and walked to the kitchen and when she arrived to the kitchen, she saw the defendant

standing next to Mr. Luck who was on the ground. After Mr. Luck fell again, the defendant grabbed him and Mr. Luck fell again. The defendant put a rope around Mr. Luck's neck and used it to tie his hands behind his back. Shortly Mr. Luck stopped moving and Ms. Pallafox realized he had died.

After Mr. Luck died the defendant began cleaning up. The defendant told Ms. Pallafox to help him or she would end up like the victim. The defendant told Ms. Pallafox that they needed to hurry and clean up because someone may have heard the gun shots.

Ms. Pallafox helped the defendant put the body in a Pack and Play crib and then placed the crib in the back of the U-haul. Before leaving to California they stopped at the defendant's mother's home for several hours.

During the drive to Salida California the defendant drove the U-haul truck and Ms. Pallafox followed in her car. Ms. Pallafox lost the defendant on the freeway. Once she was lost she arrived at the defendant's father's house. Once the defendant arrived at his father's house where Ms. Pallafox was and an argument ensued where the defendant accused Ms. Pallafox of not being lost and accused her of taking off with some other men in a Mercedes Benz, this argument became physical and police were called. The defendant was arrested for Domestic Violence. Police found the Glock 45 hand gun.

The next morning Ms. Pallafox asked her father-in-law, Andres Serrato to go out to the U-haul with her and help her get some of her belongings. Then Ms. Pallafox told her father-in-law that Mr. Luck's body was in the crib, the father-in-law called the police, the police also found other evidence such as a ballistic bullet proof vest, pictures were taken by police and entered into evidence.

## REASONS FOR GRANTING THE PETITION

As Stated in the brief and memorandum the petitioner was denied his right to the effective assistance of counsel, and his rights were violated in several ways in this case which violates due process and mandates reversal of the conviction and violates the Constitution under the 6th 5th and 14th Amendments. For the reasons Stated the petitioner would humbly request this Court to grant review and the relief request a new Trial.

# PETITION FOR WRIT OF CERTIORARI

Andres serrato Ganica an inmate currently incarcerated at Red Rock Correctional Center in Eloy Arizona respectfully Petitions this court for a writ of Certiorari to review the judgment of the 9th Circuit Court of Appeals from a denial of a writ of Habeas Corpus and a Certificate of Appealability, as well as the merit on claims raised in prior petitions. The district court and the Court of Appeals for the 9th Circuit denied Petitioner's claims as well as a COA certificate of Appealability. In *Han v. United States*, 524 U.S. 236 (1998) This court has held that pursuant to 28 U.S.C. § 1257(1) the U.S. Supreme Court has jurisdiction on Certiorari to review a Circuit Judge or a Panel of a Federal court of Appeals and Rules Governed by the Rule. Petitioners Writ of Certiorari is timely within Ninety day time limit.

## STANDARD REVIEW

### Denial of Certificate of Appealability

In *Miller-EL v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029 (2003), the Court clarified the standard of issuance of a Certificate of Appealability [hereafter "COA"]: ... A prisoner seeking a COA need only demonstrate a substantial showing of the denial of a constitutional right. "A Petitioner satisfies this standard by demonstrating that jurist of reason could disagree with the District Court's resolution of his constitutional claim, or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further. We do not require Petitioner to prove before the issuance of a COA that some jurist would grant the petition for Habeas Corpus. Indeed a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration that Petitioner will not prevail." Id. 123 S.Ct. at 1034, citing *Stack v. McDaniel*, 529 U.S. 473 (2000).

In this present case the District Court and the Court of Appeals denied the Petitioner a Certificate of Appealability despite the overwhelming evidence the Petitioner presented in his application for a Certificate of Appealability and his rebuttal of presumption of correctness in the State and District Court. Petitioner presented clear evidence of ineffective assistance of counsel which led to multiple constitutional violations. This Court should issue a COA and grant Certiorari with full briefing in the interest of justice.

A.

### GROUND ONE

The District Court erred in dismissing the Habeas Corpus and not issuing a COA on the Hearsay Statement regarding to State of Mind of alleged Victims wife. US Const 5th & 14th Amendments.

The state introduced hearsay statements as to the state of mind of the defendants wife which violates due process because one can't confront the persons State of mind. Hearsay statements as to what others said about a particular incident is inadmissible in the Court of law see Chamber vs. Mississippi 410 U.S. 284 (1973) The right of an accused in a Criminal trial to due process is, in essence, the right to a fair opportunity to defend against the states accusations. The right to confront and cross examine witness(es) and to call witness on ones own behalf which is the essential to due process, see also Crawford vs. Washington, 514 U.S. 386 158 S.Ct. (2004) eliciting statements from someones state of mind during a trial is hearsay and a violation of due process of law.

B.

### GROUND TWO

This Court should consider the petitioner's Miranda violation when involuntary statements were made on November 29th 2015 during a custodial interrogation with Detective Sandovas and Murphy. Defense Counsel filed a motion to suppress the statements made to police but the Court denied the motion. The petitioner during the interrogation clearly asked for

## GROUND FOUR

Petitioner's Fingerprints were NOT Found on the Murder weapon. US Const 6th 5th 14th Amendt

Trial Counsel did not introduce to the jury that the weapon did not contain the petitioner's fingerprints on the weapon. This could have cast doubt on the conviction and produced reasonable doubt. See Buggs vs. US 152 F.3d 439 (CA 7 1998) The Crime Lab also never identified any finger prints on the fire arm from the defendant. See also Stew v. Murashige, 389 F.3d 880 (CA 9 2004) The evidence could have told a different story if any other evidence was on the weapon other than the petitioner's, which in this case his fingerprints were not on the alleged murder weapon. See also Jackson vs. Virginia. petitioner was prejudiced by this claim, and we would ask the US Supreme Court to review this claim.

## GROUND FIVE

Impeachment of the Wifes Testimony with Photograph of the Boots. US Const 5, 6th and 14th Amend.

In the evidence there is a photo of one of the boots of the witness that shows blood at the ankle level but the witness stated she was not present when the shooting happened. Trial Counsel failed to discredit about her presence at the time of the crime, this could have also cast reasonable doubt and defense Counsel's failure to challenge this in court or present this to the jury is ineffective assistance of counsel.

an attorney. The Court denied the petitioners claim because the defendant asked for an attorney the day before but officers continued to questioning him the next day.

There is a similar case Edwards vs. Arizona 451 U.S. 478, 68 S.Ct (1988) where the Court ruled in the petitioners favor where the questioning continued the next, the interrogation must cease until an attorney is present, these statements should have been suppressed which is a clear violation of due process see Miranda vs. Arizona 384 U.S. 526 S.Ct (1966).

### GROUND THREE

C.

The District Court erred in failing to grant petitioners claim on the Crime Scene being contaminated and counsel not challenging this fact U.S. Const 5th 14th Amendment.

During the crime scene, officers and crime scene specialist contaminated the crime scene, by trampling through the scene moving items etc, Trial counsel did not thoroughly investigate this claim and go to the crime scene to investigate to examine the evidence at hand. See House v. Balkom 725 F.2d 605 (Cir. II 1984). Individuals entered the crime scene before officers arrived at the scene even during cross examination Detective Duran admitted that other people were at the crime scene before other officers arrived. Counsel should have at least visited the crime scene and made some analysis. failing to properly investigate this evidence is ineffective assistance of counsel. Petitioner would request that this court issue a certificate of appealability on this claim.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andres Serrato

Date: 6 / 2 / 2025