No. 25-6067

ORIGINAL

FILED
SEP 29 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

VIVIAN ALEXANDER EARLE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — 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

VIVIAN ALEXANDER EARLE
(Your Name)

VICTORVILLE-I-FCI-MEDIUM P.O. Box 3725
(Address)

ADELANTO, CALIFORNIA 92301
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the duress defense jury instruction violate the due process Clause of the Fifth Amendment by placing a burden of proof onto the defense, or Whether placing a burden of proof onto the defense Violates this Court desicion in SandStrom v. Montana?

Whether the Confrontation Clause of the Sixth Amendment premit excluding evidence of involuntariness to the jury or the due process clause of the Fifth Amendment to present a Complete defense?

Whether Petitioner was question as part of the booking process, or Whether Custodial police questions was the functional equivalent of interrogation?

Whether permitting the Supervising DNA expert testimony about lab work performed by absent lab analysts violates the Confrontation Clause of the Sixth Amendment or the due process Clause of the Fifth Amendment?

Whether a constitutional right attach to have Court appointed lawyer draft a requested petition for writ of Certiorari, or Whether this Court desicion in Wilkin, Doherty, and Schriner requires remanding this judgment to appoint a lawyer?

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

U.S. v. Vivian A. Earle, No. 2:19-cr-01121-GMS-1, U.S. District Court for the District of Arizona Judgment entered December 28, 2023.

Earle v. Kline, No. 2:22-cv-01566-DLR-CDB, U.S. District Court for the District of Arizona Judgment entered November 1, 2022.

U.S. v. Earle, No. 24-48, U.S. Court of Appeals for the Ninth Circuit Judgment entered May 30, 2025

U.S. v. Earle, No. 23-10029, U.S. Court of Appeals for the Ninth Circuit Judgment entered May 11, 2023.

U.S. v. Earle, No. 21-10318, U.S. Court of Appeals for the Ninth Circuit Judgment entered April 29, 2022.

RELATED CASES

U.S. v. Earle, No. 23-2965, U.S. Court of Appeals for the Ninth Circuit Judgment entered December 14, 2023.

U.S. v. Earle, No. 25-175, U.S. Court of Appeals for the Ninth Circuit Judgment entered April 1, 2025.

Vivian A. Earle v. UnKnow Parties, et al., U.S. District Court for the District of Arizona Case No. CV-22-01351-PHX-DLR, Judgment entered April 17, 2025

Complaint of Judicia Misconduct No. 23-90146. Complainant V. E. Judicial Council of the Ninth Circuit, Judgment entered August 1, 2024

Vivian A. Earle v. Parties et. al., Defendants, U.S. Court of Appeals for the Ninth CirCuit case # No. 25-2923, Judgment Pendening

Complaint of Judicia Misconduct No. 25-90169, Complainant V.E. Judicial Council of the Ninth Circuit Courts, Judgment Pending

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 May 30, 2025.

[ ] 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: July 3, 2025, and a copy of the order denying rehearing appears at Appendix H.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ________ (date) on ________ (date) in Application No. __A____.

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

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

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

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ________ (date) on ________ (date) in Application No. __A____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment.......37, 38, 42, 63, 9, 10, 11, 12, 13, 14, 15, 19, 3, 4, 1

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 arising in the land or naval force, or in the militia, when in actual Service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeoparody 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.

Sixth Amendment.....59, 67, 3, 4, 19

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 accusation; to be confronted with the withnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assitance of counsel for his defense.

Criminal Justice Act of 1964...........71

Code of Conduct for United States Judges, Canon...42.

STATEMENT OF THE CASE

The facts necessary to place in their setting the question now raised can be briefly Stated:

On August 23, 2019, Petitioner was arrested in Phoenix Arizona On Auguest 23, 2019.

On September 18, 2023, Petitioner was indicted for bank robbery 2113a in this cause thenpending in the United States District Court for the District of Arizona, entitled United States v. Vivian A. Earle, Criminal No. 2:19-cr-01121-GMS-1.

On November 1, 2022 the District Court for the District of Arizona Denied Petitioner's Writ of Habias Corpus Case No. 2:22-cv-01566-DLR-CDB, Earle v. Kline.

Petitioner was found guilty by a jury on an indictment of Five Counts of Bank Robbery charging violations of 2113(a).

On December 28, 2023 the District Court entered judgment and Petitioner was Sentenced to 109 months imprisonment on each count to run Concurrently. This judgment and Sentence was appeal on July 12, 2024 [Doc. 21] and the Judgment and Sentence was affirmed by the U.S. Court of Appeals for the Ninth Circuit on May 30, 2025 [Doc. 76] [App. A. at 2-4]. [App. H. at 31] Petitioner moved for Rehearing by Panel or by En Banc on July 3, 2025 [Doc. 77]

Petitioner moved the appeals Court to appoint an attorney to draft my requested petition for a writ of Certiorari to this Court, the appeal Court denied the motion [Doc. 88-89]. Appellate Counsel withdraw from the Case [Doc. 85] the court granted her withdrawal motion [Doc. 86-87]

Petitioner moved the District for the District of Arizona to appoint an attorney to draft my requested Certiorari [Doc. 466] the District Court Judge Denied the motion to appoint attorney [Doc. 469] [App. E. at 21-2

Petitioner is Serving this Sentence in Victorville Medium FCI

SUPPESSION OF INTERROGTIONS

Petitioner was De-Facto arrested without probable cause, the search warrant probable cause affidavit to search me and my car lack probable cause the affiant alleged that "Mario Remirez and Antonio Barrera, has Committed the Crime". Petitioner moved to Suppress the interrogation, based on Continued interrogtion after I had invoked my Miranda rights to Silence and to have an attorney present [App. F. at 23-27], [4-ER-907-12.; 4-ER-897-906; 4-ER-891-94], it also addressed overaching voluntariness. [4-ER-904; 4-ER-843]. At the hearing, Officer Black Hammond, Agent Paul Lee and Petitioner testified. [4-ER-736]. Agent Lee testified that officer Hammond had not inform him about Petitioner invoking his right to Silence or to have an attorney and rejecting questions [4-ER-799-800]. Petitioner testified that I had invoked my right to silence and to have an attorney at the time of my arrest and while being interrogated in route to police Station after the one man showup ID. Officer Hammond body cam recording Somehow became muted at those moment. [4-ER-814-15; 4-ER-817-18].

The district Court claimed that Petitioner ambiguously invoked during interrogation and were insufficient to require agent Lee's interrogation to Stop, the Judge claimed I waived my rights Knowingly and voluntary. [1-ER-72] The Judge claimed my arrest scene invocation to silence were void because it was premature and nullified by my willingness to talk to "lead detective". [1-ER-69-78]. Stephen Wallin moved for reconsideration based on Rhode Island v. Innis, 446 U.S. 291 (1980), arguing that officer Hammond Challenging Petitioner's assertion that police do not know what is going on was the "functional equivalent of interrogation", that resulted in Petitioner agreeing to speak to lead detective [3-ER-562-88; 3-ER-498-509, 3-ER-494-97] The Judge denied reconsideration as without merit. [1-ER-43-53], [App. C. at. 9-16]

During Petitioner's Criminal Trial in the District Court, the Government offered as Government's exhibit 122 and 123 10-ER-2490, the video recorded interrogation with Petitioner and agent Lee, and the transcrit of the redacted video interrogation. 10-ER-2490.

Petitioner objected to the admission of the evidence on the grounds they violates my Fifth Amendment right. 10-ER-2490-91. The Court overruled Petitioner's objection and admitted the evidence 10-ER-2491 [redacted]

The government argued to the jury in it's closing argument that they Should Start with the confession "And you Start there with the Confession thats the only Starting point." 11-ER-2736. Then further Stated "He volunteered in the interview with agent Lee that the color of the car that he drove to robbery No. 1 was black. 11-ER-2737 [redacted]

And in the Court of Appeals on appeal in the criminal case argued that there were no Miranda, no Innis or Fifth Amendment violation and if any violation occurred it was harmless error. [Govs. Ans Brief Doc 43].

The Court of Appeals for the Ninth Circuit Panel Memorandum affirming Petitioner's Conviction, held that "The district court concluded that the limited exchange between officer Hammond and Earle conceering matters unrelated to Earle's arrest did not Constitute an interrogation" [App. A. at 3] "Considering the totality of all the surrounding Circumstances, Earle fails to demonstrate how officer Hammond's Statements rendered his confession to Agent Lee involuntary." [App. A. at 3] [Gov. Ans Brf DOC. 43]

Testimony and Evidence at Trial

Petitioner repeatedly Sought to Show the jury that my arrest, Search and custodial police interrogation were unlawful.

The Judge told Petitioner I would not be allowed to broach any Suppression subjects that the Court had previously rule on against me, e.g., 5-ER-12-15; 5-ER-1222, the Court reinforced that when I argued lack of probable cause for my arrest and unlawful Search and Siezur of my car. 8-ER-1858-60; 8-ER-189; 6-ER-1304. However the Judge applied the Same reasoning to exclude evidence Concerning involunariness as reflected by arrest scene invocations of Miranda, 9-ER-2230-31; 9-ER-2248; 6-ER-1311-14; 6-ER-1337-38; 10-ER-2662-64 and Petitioner's aguments along that line, 11-ER-2765-67.

Petitioner Called Officer Hammond to the witness Stand at trial, the judge interceeded, demanding to know in advance what Blake Hammond would be questioned about. 10-ER-2662-63. The judge never previewed other witnesses testimony. Petitioner intended to Show the jury the body Camera footage of me telling police that I am not answering no question, 10-ER-2612-13; 10-ER-2663-64. Sustaining the governments objection that had been Settled in the Suppression context, she allowed Petitioner to ask Blake Hammond whether I had invoked my right to Silence. 10-ER-2663-64. But when Petitioner ask officer Hammond he responded "You didn't tell me that" (contradicted by his Suppress hearing testimony, 4-ER-744-45, and the precluded video, Defendant Exhibit 1065*). [App. G. at 28-30].

Shocked and in disbelief Petitioner addressed the judge: "Your Honor, let the record reflect that he State that I didn't Say anything to him.... And we have video Stating otherwise". 10-ER-2665. Though this called for reconsidering the video's preclusion, the the government objected that there was "no question posed here", id and rather than address Petitioner's legal point, the Judge "Struck" Petitioner's argument. 10-ER-2666. Petitioner prevented from introducing critical evidence of involuntariness to the jury, Petitioner tried to impeach officer Blake Hammond with his friendship with the Judge, asking if he was familiar with anyone in the Courtroom? officer Hammond responded, "Not really". Petitioner then ask Officer Hammond "Not the Judge?", the government objected to relevance the Judge Sustained — again protecting his friend officer Hammond from prejury and impeachment. Officer sensing he had lied under oath responded "Oh, I'm sorry, are you asking - are you asking if I Know the Judge, Sir?" But before Petitioner could respond, the government reminded the Judge that "I've lodged an objection", the Judge Sustained the objection. 10-ER-2666. Petitioner realizing the Judge had revealed his conflict of interest with the government witness officer Blake Hammond his friend Petitioner was left with no other option but end the Direct Examination of Officer Hammond the Judge former law parner Son. 4-ER-872-73. [App. G. at. 28-30]

The video of the officer Hammond and Petitioner when I invoked Silence and rejected his interrogation was on Defense exhibit list 2-ER-297. 2-ER-305-56 transcript with invocation at 3. The judge excluded it from the record 10-ER-266

Petitioner tried to show the involuntariness to the jury in my Closing argument 11-ER-2766-67. The government "I'm going to object to this line of question, your Honor. This goes to the motion to suppress." 11-ER-2767. The Court Sustained the government's objection

And in the the Court of appeals on appeal in the Criminal case the government argued that it was not error to exclude the video evidence of Petitioner telling officer Hammond and other police officers I am not answing no questions and rejecting officer Hammond interrogation. The government also argued any error in excluding the evidence of involuntariness was harmless error. [Gov Ans Brf Doc. 43]

The Court of appeals for the Ninth Circuit on appeal in its Memorandum affirming the conviction, held: Mr. Earle "fails to demonstrate how Officer Hammond's Statements rendered his confession to Agent Lee involuntary." And applied "the totality of all the surrounding circumstances". DKt 76.1, page 2. [App. A. at 3

Jury Instruction On Duress Defense

Pertrial Petitioner moved to Suppress interrogation with agent Lee litigating the two motion to suppress under Miranda and Innis both motion were denied by the Judge. On the first day of trial the government raised the idea of a Duress Defense instruction, Counsel Confirmed "I am not raising a duress defense". [5-ER-1198-99]. But the government said it might ask for that instruction to explain the elemento of duress "So they don't believe duress was raised". [5-ER-1199]. Petitioner had preserved his objection to admitted interrogation through my Suppression motion, and when the government moved to admit it at trial [Gov trial Exh 122 and 123] the video and transcript of the interrogation, Petitioner objectected that the evidence violates Petitioner's Fifth Amendment right [page.35]. [10-ER-2490-91]. Petitioner was overruled by the Judge [10-ER-2491].

The Court and the government prosecutor knew duress was not my defence, in fact the Judge and prosecutor had commented on this very fact on June 1st 2023, When the Judge had revealed Petitioner and his attorney Stephen Wallin privileged Communications made in confidence on defense theory of the case. The Court: "What about the tracking"... The Court: "I know that there's an alternate theory that mr. Earle has that may be it went the other way". [2-ER-329], line 12 and line 18. The Judge Court reporter then Jimmy that part of the transcript to protect the Judge from a charge of violating the Code of Conduct for United State Judges Conon 1 and 2 [See. App. G. at. 28-30] [2-ER-329]. The evidence shows that the Judge and the prosecutor knew duress Was not my defense long before trial. Yet both above forced a duress defense onto Petitioner at trial, Petitioner's defense at trial were I did not commit the robberies at all someone else robbed those banks. Yet the Judge and U.S. attorney Restaino had an ex parte Sidebar Communication in the middle of my closing argument, thats when the decision was made to give the erroneous duress jury instruction [11-ER-2819-20], Petitioner's faith was sealed right then and there.

The Judge and his Court reporter violated the Court reporters + ("CRA"), 28 U.S.C. 753, When they failed to record the ex parte communication on day 6 at trial. Thereby denying me Due Process.

Towards the end of testimony, the government asked for a duress instruction [10-ER-2685]. After the Judy promised not to issue the duress instruction if Petitioner did not raised duress in closing 10-ER-2694-95, and acknowledged that in resolving the jury instruction with the parties [11-ER-2781]. the judge reneged on duress instruction contended that the warrant's report that two other men committed the robberies would confuse the jury 11-ER-2787. Petitioner never argue duress in closing [11-ER-2795-2817]. Petitioner objected to the duress defense instruction [11-ER-2788] The judge stated he would give the duress instruction [11-ER-2788]. In its rebuttal, the government recited the elements of duress, arguing to the jury that Petitioner had not satisfied duress requirment [11-ER-2829-30]. After Closing arguments, the Court instructed the jury on duress. [2-ER-290].

On appeal the government argued that giving the duress instruction was warranted because Earle had blamed the two other men the affiant named in his affidavit for a warrant to search me and my car. And further argued that any error in instructing the jury on a duress defense was harmless error. [Gov. Ans Brf Doc. 43]. [App. F. at 25]

The Ninth CirCuit Court of Appeals on appeal in affirming held "We review whether the factual foundation was sufficient to warrant a jury instruction for an abuse of discretion." United States v. Wiggan 700 F. 3d 1204, 1210 (9th Cir 2012). If error occurs, we "need not reverse" if "there is no reasonable possibility that the error material affected the verdict." United States v. Bachmier, 8 F. 4th 1059, 1065 (9th Cir 2021) [Doc. 77]. [App. A. at 3]

"Assuming without deciding that the district erred in instructing the jury on a duress defense, that the Dristrict erred in instructing the jury on a duress defense, that error was harmless beyond a reasonable doubt". [App. A. at 3]. [Doc. 76. at. 4-5]

Petitioner filed a Petition for Rehearing by Panel or by En Banc to the United States Court of Appeals for the Ninth Circuit, arguing that the Panel decision affirming the duress instruction issue conflict with SandStrom 442 U.S. 510 (1979) and Francis v. Franklin, 471 U.S. 307 (1964).

That the Panel applied the wrong Standard of review to decide the duress the duress instruction issue, in conflict with United States v. Batterjee and United States v. Bussell, 44 F.3d 1048, 1058 (9th Cir. 2005), Sarapp v. United Transp. Union 889 F.3d 1088, 1094-95 (9th Cir 2018) [Doc 76 at 4], [App. A. at. 3-4].

The Ninth Circuit Panel Denied Petitioner's Petition for Rehearing by Panel or by En Banc [Doc. 77]. [App. H. at. 3]

The Panel just ignored the law and their oath of office, the Panel disregarded this Supreme Court precedents their own precedents an other Circuit precedent to punish Petitioner for defending his Constitutional rights and taking my case to trial. [App. H. at 31]

Excluding DNA Lab Analyst's

The goverment moved in limine to aviod calling the six Quantico lab technicians who DNA tested the mask, gloves, and Petitioners buccal swabs; it asked to just call the the Supervisor who quantified their interpretation of the evidence, 3-ER-417-28, base on William v. Illinois, 567 U.S. 50, 58 (2012). 3-ER-423. Acknowleding that William was controlling, defense counsel presciently objected that William had been wrongly decided, and Petitioner believes William is ripe for reconsideration by the Supreme Court, due to changes in the makeup of the Court. 3-ER-415. The district court ganted the government's motion to exclude the six lab technicians 1-ER-42.

At trial the government called to the witness stand, Mr. Fletcher testified about the 5-step process to analyze DNA, 7-ER-1574; 7-ER-1543, and that the lab techninians. 7-ER-15 Mr. Fletcher described how they collected the samples off the mask and gloves. 7-ER-1540; 7-ER-1549-50; 7-ER-1552-53. Mr. Fletcher reported their conclusions: the mask's DNA was from "a single individual," 7-ER-1541, the left glove's had DNA from four persons while the right glove had DNA from three, 7-ER-1543-44, and that DNA was from a male. 7-ER-1553. Mr. Fletcher wrote his opinion, however Mr. Fletcher used the six absent law analyst's work for the basis of his opinion. 7-ER-1592.

[redacted]

(Denying Petitioners Motion to Appoint a Lawyer)

The Court of Appeals for the Ninth Circuit affirmed Petitioner's Conviction on May 30, 2025, [Doc. 76]. [App. A. at 2. Petitioner filed a Petition for Rehearing by Panel or by Rehearing En Banc [Doc. 77] the appeals Court denied it on July 3, 2025 [App. H. at 31].

Petitioner made multiple requests to Court appointed attorney Donna Lee. Elm in writing and Email to file a Petition for a writ of Certiorari to this Supreme Court, if and when the Court of Appeals for the Ninth Circuit affirmed the conviction or denies the petition for Rehearing by Panel or En Banc.

There after Counsel Donna Lee. Elm moved to withdraw from the case, without filing my requested petition for a writ of Certiorari to this Supreme Court [Doc. 85]. The Court of Appeals granted Counsel motion to withdraw [Doc. 86-87]

Petitioner filed a motion for appointment of an Attorney to draft my requested petition for Certiorari to this Court [Doc. 88] the Court of Appeals Denied my motion for an attorney [Doc. 89]. Petitioner cited this Supreme Court precedents in my motion to appoint an attorney to draft Certiorari, Wilkins v. United States; Doherty v. United States; Schreiner v. United States. However the Court of Appeals for the Ninth Circuit Still Denied my motion for a lawyer [Doc. 89]. Petitioner moved the Court for reconsideration citing the above precedent again and arguing the Court had committed clear error and a clear injustice therefore the Panel must appoint Petitioner an attorney to draft Certiorari for Petitioner. The Court did not respond

for

reconsideration of it's order Denying my request for appointment of an attorney. Petitioner then moved the Court of Appeals again for an Inquiry on my motion to reconsider but got no response from the Court. [Doc. 89] [Doc. 78] [Doc. 82] [Doc. 92-94].

Petitioner Sensing the Ninth Circuit Court of Appeals would not act on Petitioner's motion for appointment of an attorney moved the United States District Court for the District of Arizona making the Same request to appoint an attorney to file a petition for a writ of Cirtiorari to this Supreme Court. Petitioner has not receive any response from the District Court, Petitioner moved the District Court for an Inquiry on the motion to appoint an attorney but got no response from the Court.

The Ninth Circuit finally answered on August 28, 2025 [Dkt 94] only to informed Petitioner that the case was close #24-48 and petitioner Should **stop** moving the Court.

The district Court finally answered on September 11, 2025 denying Petitioners motion to appoint an attorney to draft my petition for a writ of Certiorari to this Court and falsely claiming "Earle offers no authority Suggesting there is any basis to do so here". Doc. 469. [App. **E**. at. 21-22]. Petitioner cited this **Supreme** Court precedents and cited the Criminal Justice Act of 1964. Yet the Judge falsely claimed I did not [App. G. at. 28-30].

THE PANEL DECISION AFFIRMING THE DURESS INSTRUCTION THAT PLACED AN UNJUSTIFIED AND UNCONSTITUTIONAL BURDEN OF PROOF ON PETITIONER WAS FUNDAMENTALLY AT ODDS WITH SANDSTROM v. MONTANA

The Court Should Grant Certiorari Because Improperly Imposing the Duress Defense Buden on Petitioner Was a Constitutional Violation Whose Peculiar Nature Presents a Matter of First Impression throughout Federal Courts.

Petitioner's arrest and Search warrant lack probable cause App. F. at

The factual Scenario leading to the Seriously erronious Duress Defense intruction is unique. During interrogation Petitoner adopeted agent Paul Lee's Suggestion that others had force Petitioner to rob. [12-ER-2956, et Seq.] Petitioner toldall his attorney's I did not rob any banks an did not have any information on who might of rob the banks [Govts Trial Exh 123, SERs video] and [Govts Trial Exh 122 transcript of video interrogation]. Petitioner had objected to the introduction of Statements pretrial, twice litigating their Suppression to no avail whatsoever. [3-ER-562; 4-ER-907]. At the beginning of trial, the government floated the idea of a Duress Defense instruction, but defense counsel avowed they were not pursuing that defense. [5-ER-1198-99]. Indeed, Petitioner's defense at trial were I did not commit any robberies at all, someone else robbed those banks. Petitioner never mention any Mexican coercion at trial, Duress Defense was never apart of Petitioner's defense, therefore a Duress Defense instruction was not relevant to Petitioner's case, however the prosecutor and the judge seemed hell bent on giving it to the jury. When the government prosecutor was going to admit to the jury a video clip taken from Petitioner's interrogation with agent Lee, Petitioner again objected, but was overruled by the judge. [10-ER-2490-91]. The government could have instead had its interrogating case agent Lee testify about Petitioner admissions relevant to committing the charged robberies without including failed reliance on agent Lee's suggested duress defense; the prosecutor certainly admitted such testimony about the interrogation during trial [10-ER-2491-95]. The government chose instead to play the initial part of the interrogation to the jury which included the Mexicans reference. After playing that video clip, the government elicited agent Lee's testimony that his investigation about Mexicans coercion uncovered no evidence confirming the Mexicans coercion defense. [10-ER-2493]. That confirmation plus the fact Petitioner never advanced any duress defense at trial, should have put that defense to rest. If it felt the need to dispel Petitioners interrogation duress concession thereafter, the government was free to explain in closing argument that there was no Coercion. In fact, the prosecutor tried (ineffectively) to do that in its rebuttal argument [11-ER-2829-30], which, if done properly, would have made a Duress instruction all the more unecessary, but they wanted to inflamed the jury.

Petitioner never attempted to advance a duress defense at trial. It was the government prosecutor who asked for the Duress Defense instruction. [10-ER-2685]. The prosecutor did so because it introduced the duress issue at trial through its interrogation video clip. [10-ER-2685]. At the charge Conference, the district Court judge had first rejected that instruction, advising Petitioner that that would hold as long as Petitioner did not raise that defense in closing argument. [10-ER-2694-94]. Petitioner made no duress argument in closing argument. [11-ER-2787], Petitioner argued that Someone else robbed the banks as I did throughout trial, and pointing to the search warrant affidavit where the affiant detective Raymond O'Neill Stated that Mario Ramirez and Antonio Barrera had committed the crime [11-ER-2756-58][App. F at 23]. Despite Petitioner compliance not arguing duress, midway through Petitioner's closing argument, the trial Judge reneged on his promised pledge to Petitioner, deciding to issue the Duress Defense Instruction [11-ER-2787], over Petitioner's objections [11-ER-2788].

The facts are the trial Judge and the governments prosecutor wanted that duress defense instruction to go to the jury. The trial Judge in open Court interrupted

Petitioner's closing argument to have a sidebar ex parte communication with United States attorney Gary M. Restaino [11-ER-2819-20, line 19-25 and line 1-8]. It was at this sidebar ex parte communication with the Judge and the U.S. attorney that the agreement between the two was made to give the Duress Defense instruction to the jury [11-ER-2819-20]. That instruction placed an unjustified burden of proof onto Petitioner for a defense I never raised, or advanced, that defense was never my theory to the jury (therefore Petitioner would surely fail to meet that burden), to the benefit of the prosecution who had introduced the duress Defense issue into trial in the first place. [1-ER-6]. Inflaming the jury to cause my conviction.

Although the jury was read a general burden of proof instruction (Ninth Circuit Model Criminal Instruction 6.2 [2-ER 269]) at the beginning, the specific Duress Defense instruction that was read later (Ninth Circuit Model Criminal Instruction 5.7 [2-ER-290]) created an exception to the goverment's general burden of proof. The Duress instruction told that jury that, "[i]f you find that each of these things [three requirements to satisfy duress] has been proved by a preponderance of the evidence, you must find the Defendant not guilty." [2-ER-290 (emphasis supplied)]. In other words, a finding of Duress would defeat the government's general burden of proof of the offense. Nothing in that general burden instruction discussed its relation to that specific defense burden instruction. Nor did the specific Duress Defense instruction inform the jury that if they did not find that defense was established, they would necessarily have to evaluate the government's general burden of proof. It was not unreasonable for a layperson to conclude that the specific defense burden instruction was superior and would be dispositive.

Finding that Petitioner had failed to established his defense therefore offered the jury a far easier and quicker means to resolve the case.

Petitioners trial was a (six 6 days), messy, and confusing. Evidence from the 5 counts were intermixed and not systematically or chronologically presented. Which was intended by the prosecution. Physical evidence connecting Petitioner to the charged crimes was all but non-existent in the first four robberies, So the jury would have to wade through circumstantial evidence, some inconsistent eyewitness identifications, a confession that never identified several of the banks, and instruction directing the jury to weigh two divergent burden of proof. Given the need for the jury to sort out and organize the evidence supporting the different counts in order to assess whether the government met its burdent as to each ~~counts~~, no one experienced in trial work would expect a relatively quick verdict. With no jury questions indicative of what they were considering, the jury returned guilty verdicts on all 5 charge in under 4 hours.

[Minute Entry Doc. 299.] [App. I. at 32-33]
The Duress instruction therefore could have caused the jury to convict Petitioner because I had failed to meet my burden of proof on a matter that the jury was told to decide.

Instructing the jury on a duress defense that Petitioner never raised at trial, imposing that burden on Petitioner to the benefit of the government (Who had injected that theory into the trial evidence, then demanding entitlement to that instruction), was so clearly improper and legally erroneous that Petitioner has been unable to find any case examples directly on point in any Circuit.

The Panel presumed duress instruction was error [Doc. 76 at 4] though the Panel too had found no case authority to cite. This forced duress defense issue under its bizarre factual Scenario presents a matter of first impression, Additionally, Shifting an unwarranted burden of proof onto the Defendant is a Due Process violation. SandStrom v. Montana, 442 U.S. 510, 524 (1979). Given the Serious Constitutional infirmity in this matter of first impression throughout federal Court, this Supreme Court Should grant Petitioner a writ of Certiorari to thoughtfully address this issue.

Two important point needs noting here the trial Judge and the United States Attorney Mr. Restaino had an ex parte sidebar Communication in the middle of Petitioner's Closing argument. This was when they decided to give the jury the duress instruction [11-ER-2819-20]. The Court violated the Court reporter act as well [28 U.S. 753] by not recording the ex parte sidebar communication with U.S. progecutor.
The Court was also aware that duress was not my theory [2-ER-329], 6, 1, 2023

THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF THE COURT AND THEIR CIRCUIT COURT

The Panel's Decision Affirming the Duress Instruction Issue Conflicted with Sandstrom v. Montana, as Well as United States v. Rubio-Villareal and Francis v. Franklin, because the Error was Not Harmless.

In Sandstrom, 442 U.S. at 525-26, the Supreme Court broadly held that placing a burden of proof onto the defendant violated Due Process. See also Francis v. Franklin, 471 U.S. 307 (1985); United States v. Rubio-Villareal, 927 F.2d 1495, 1500 (9th cir 1991) (en banc). The Court cited Patterson v. New YouK 432 U.S. 197, 214 (1977) that Due Process is violated by imposing a burden of proof onto the defendant. Sandstrom 442 U.S. at 525-26. Although the Court later carved out an exception for affirmative defenses that did not negate any element of the Crime, Dixon v. United States, 548 U.S. 1 (2006), that exception would logically only apply when the defendant had undertaken that defense. Obviously the broader holding that placing an unwarranted burden on the defendat was unconstitutional remains in full effect.

The Court of Appeals Panel therefore Should have Clearly found that imposing the Duress Defense's burden of proof onto Petitioner, I did not raised a duress defense at trial, therefore placing a duress defense on Petitioner was a Serious Due Process violation. But the Court of Appeals Panel only assumed (without deciding the matter) was error, and it failed and ignored the Constitutional ramifications per Sandstrom, et al.

This Supreme Court must reverse the conviction unless the error was harmless beyond a reasonable doubt, understood as "a reasonable possibility that the error materially affected the verdict." Rubio-Villareal, 927 F.2d at fn.3 (citing United States v. Herbert, 698 F.2d 981, 981, 987 (9th Cir), cert. denied, 464 U.S. 821 (1983)). A "reasonable possibility" is not a high Standard.

The Court of Appeals Panel erroneously concluded that any error would be harmless beyond a reasonable doubt. [App. A. at 3-4] [Doc. 76 at 3-4]. If the erroneous instruction resulted in Conviction because Petitioner never proved the duress defense then it surely "materially affected the verdict." Furthermore as presented above, it was "reasonably possible" that the jury could have concluded Petitioner was guilty due to Petitioner's failure to prove duress. Consequently, the Panel cannot say there was "no reasonable possibility" that the deeply flawed Duress Defense instruction affected the verdict. [App. A. at 3-4]

The Panel, howere, failed to engage in that analysis. Instead, its rational regarding harmlessness rested on other instructions that mentioned the governments burden of proof [Doc. 76 at 4-5].

It referenced the general "presumption of innocence, burden of proof" instruction that Stated, "The defend is presumed to be innocent, unless and until the government proves the defendant guilty beyond a reasonable doubt," nothing that the defendant does not have to prove anything [2-ER-269]—an instruction the jury may have disregarded given the more specific Duress instruction allocating a burden of proof to Petitioner. The Panel aslo noted that the Robbery instruction reiterated the government's general burden to prove all offense elements beyond a reasonable doubt [2-ER-291].

This Supreme Court and the Panel own Ninth Circuit precedent make it clear that reliance on general instructions such as the Ninth Circuit Model Criminal Instruction 6.2. (issued in Petitioner's case [2-ER-269]) may not overcome the Due Process violation occuring in Petitioner's case. See Francis, 471 U.S. at 318-19; United States v. Pierre, 254 F.3d 872, 876 (9th Cir 2001) (because the general burden of proof instructions did not clearly indicate that they applied to the improper defense instruction, they did not cure the defective instruction's error, citing United State v. Sanchez-Lima, 161 F.3d 545 (9th Cir 1998)). Acknowledging that it was that other instructions, taken as a whole, could potentially explain "the proper allocation of burdens with sufficient clarity" so that any ambiguity between the would not have created the error, this Supreme Court in Francis held that general instruction of government burden—in fact exactly the same instruction that the Panel relied on here—do not negate the improper burden shifting instruction 471 U.S. at 318-19 (Citing Sandstrom, 442 U.S. at 518-19)).

As mention, neither the general government's burden instructions, nor the Specific Duress Defense instruction, directed the jury how to allocate the inconsistent burden presented to them. The Court of Appeal for the Ninth Circuit Panel reliance on the general government's burden instructions thus cannot Salvage the burden-shifing Constitutional violation in this case. Francis v. Franklin, 471 U.S. 307 (1985); United States v. Pierce 254 F.3d 872 (9th Cir. 2001); United States v. Sanchez-Lima 161 F.3d 545 (9th Cir. 1998). Therefore, the Court of Appeals Panel's Conlusion that the Duress Defense instruction error was "harmless" Clearly is in conflict with this Supreme Court precedent and other circuit precendential authority.

THE PANEN ERRED

The Panel Applied the Wrong Standard of Review to Decide the Duress Instruction Issue, in Conflict with United States v. Batterjee 361 F.3d 1210 (9th Cir. 2004) and a Clear Line of Ninth Circuit Cases.

Although jury instruction are generally reviewed for abuse of discretion When the parties disputed a legal determination about applicability of an instruction, this Court reviews that that de novo. United States v. Batterjee, 361 F.3d 1210, 1216 (9th Cir 2004)). [See Doc. 21 at 52]. The abuse of discretion Standard is reserved for review of "the precise formulation of the instruction", whereas the Court applies de novo review "to determine whether they adequately presented the defendant's theory of the case" United States v. Bussell, 414 F.3d 1048, (9th Cir 2005). Jury instructions that improperly allocate the burden of proof "would be errors at law" that are reviewed de novo. Snapp v. United Transp. Union, 889 F. 3d 1088, 1094-95 (9th Cir. 2018), cert. denied, 586 U.S. 1073 (2019).

The Court of Appeals for the Ninth Circuit Panel Decision to review this issue merely for abuse of discretion [Doc. 76 at 4] conflicts with this clear line of Circuit precedent. The Panel were required to analyzed the Duress Defense issue under the heightened de novo Standard. Doing so, it would have found that the Duress Defense Instruction impermissibly placing a burden of proof onto Petitioner violated Due Process per Sandstrom, 442 U.S. at 524. As discussed above. This Supreme Court must therefore reverse the conviction. [App. A. at 3]

THE PANEL ERRED

The Court of Appeals for the Ninth Circuit Panel Decision is in Conflict with Supreme Court and Ninth Circuit Precedent by Treating the Crane v. Kentucky Issue as a Question of Legal Involuntariness Rather than a Question of Entitlement to Bring Factual Invonluntariness to the Jury.

The Panel decision conflicts with Crane v. Kentucky, 476 U.S. 683 (1986), deciding the appeal issue based on finding no legal invonlutariness, rather than deciding the admissibility of involuntariness evidence at trial. It also Conficts with United States v. Sittion, 968 F. 2d 947 (9th Cir 1992) and United States v. Farrar, 5 F. 3d 541 (9th Cir 1993) (unpub). Consideration by this Supreme Court to grant Certiorari is necessary to ensure that lower Court adherence to this Supreme Court law as well as maintaining uniformity within jurisdiction FRAP 35(b)(1)(A).

In Crane, this Supreme Court held that regardless that the district Court ruled that the Confession was not legally involuntary; Due Process entitled Crane to bring the factual question of involuntariness to the jury. 476 U.S. 683 (1986). In Crane, the district Court had dined Crane's Motion to suppress his confession, ruling that it involuntariness to show them that his confession was unworthy of belief. Id. at 684. The prosecutor objected that this was "a legal matter" that had been resolved pretrial, and the district Court agreed, ruling it was inadmissible Id. at 695-86. This Supreme Court instead held that:

This analysis finds no support in our cases, is premised on a misconception about the role of confessions in a criminal trial, and, under the circumstances of this case, contributed to an evidentiary ruling that deprived petitioner of his fundamental Constitution right to a fair opportunity to present a defense.

Id. at 687 (citing California v. Trombetta 467 U.S. 479, 485 (1984)). This violated both the Sixth Amendment and Due Process. Id. at 684. This distinction was not a novel concept, for it had arisen as well in Jackson v. Denno, 378 U.S. 368, 390-91 (1964), and lego v. Twomey 404 U.S. 477, 485-86 (1972). Congress Codified this requirement in 18 U.S.C. § 3501(a).

In Petitioner's trial, both the judge and the prosecutor missed this distinction, Committing the Same error as in Crane. The district Court denied Petitioner's two (2) attempts to Suppress the Confession pretrial [3-ER-562; 1-ER-69; 4-ER-907; 1-ER-43]. In trial, when Petitioner Sought to question agent Paul Lee about misreading Miranda rights, the prosecutor objected: "I'm going to object at this point, Your Honor. This is a legal issue". The district Court judge agreed, and instructing the jury: Ladies and Gentlemen of the jury matters about Miranda and its adequacy are decided by the Court. They'er not decisions for the jury to make, and so I have already made these determinations and I'm going to Sustain the objection. [10-ER-2506-07]. Petitioner Continued trying to elicit that information, with the government objecting and the trial judge Sustaining it, unit there were two (2) telling exchange. [See 10-ER-2508; 10-ER-2510]. Additionally, when Petitioner Sought to Show my arrest Scene invocations of my right to remain Silent and rejecting officer Hammond questions yet officer Blake Hammond persisted to question Petitioner- the prosecutor objection twice that it was decided in the motion to Suppress, and the district Court judge Sustained the objection [10-ER-2663-64]. When Petitioner tried to argue it in closing, the government objection referencing the Suppression Motion was Sustained. [See 11-ER-2766-67]. As in Crane, this prevented Petitioner from Showing the jury evidence that Petitioner's will to resist officer Hammond Custodial Police Interrogation was overborne and thereby have the jury accord less weight to Petitioner admissions.

Addressing the district Court judge ruling precluding this evidence at trial, the Court of Appeal for the Ninth Circuit Panel Johnnie B. Rawlinson, Patrick J. Bumatay and Gabriel P. Sanchez erroneously concluded that the evidence did not prove involuntariness: Mr. Earle "fails to demonstrate how Officer Hammond's Statement rendered his confession to Agent Lee involuntary." [Doc. 76 at 3]. Deciding the excluded evidence was not legally involuntary, so it was not admissible to the jury, was precisely the same error as in Crane. The Constitution and case law entitled a defendant to bring that evidence to the jury.

Instead, the question of admissibility of evidence at trial is governed by the evidence rules. As Counsel Donna Lee. Elm discussed with Judge Bumatay at Oral argument, the excluded evidence only had to satisfy the low threshold of relevance (FRE 401). Since it tended to show that Petitioner's will to resist questioning was overbone, it was at the minimally relevant. It was not "incompetent, privileged, or otherwise inadmissible" under evidence rules. LaGrand v. Stewart, 133 F.3d 1253, 1266 (9th Cir 1998). Moreover, the Confession was highly matirial evidence for the prosecution as demonstrated by its "Starring role" in the governments closing argument. [See 11-ER-2736-40]. Kyles v. Whitley, 514 U.S. 419, 444 (1995); United States v. Sedaghaty, 728 F.3d 885, 902. (9th Cir 2013).

Thus precluding evidence undermining the confession was a highly significant blow to Petitioner's Defense

Note that the Panel ruling on the Crane issue used the "totality of the circumstances" test. [Doc 76 at 2] that is the standard applied to determine legal voluntariness Citing legal voluntariness regarding suppression from Dickerson v. United States, 530 U.S. 428, 434 (2000)). Doing so further substantiates that the Panel was erroneously relying on legal determination of involuntariness instead of its factual admissibilty at trial. [App. A. 3-4].

The Court should hear the matter by granting Petitioner request for a writ of Certiorari because the Ninth Circuit Panel's reasoning conflicts with this Supreme Court precedents Crane v. Kentuck, 476 U.S. 683 (1986); Lego v. Twomey, 404 U.S. 477 (1972); Jackson v. Denno, 378 U.S. 368 (1964). It is additionally inconsistent with the holding of Sitton, 968 F.2d at 957-58, and Farrar, 5 F. 3d at *1 ("The jury was entitled to hear evidence going to the voluntariness of the confession so that it could assess the weight it would give to the confession"). Moverover, those cases showed that interactions with police and after interrogation may be admissible to undermine confidence in the confession.

Petitioner's Fifth Amendment Rights Violated
The District Court Erroneouly Found the Confession Voluntary Despite Post-Invocation Scene Questioning of Petitioner That Elicited a Concession to Talk to the Interrogator. Likewise the Appeals Court Erroneouly Affirmed.

An unambiguous invocation of the right to remain silent must be "Scrupulously honred." Miranda 485 U.S. at 479. Interrogation includes statements "reasonably likely to elicit an incriminaling response". and psychological ploys Innis, 446 U.S. at 299, 301; Colorado v. Connelly, 479 U.S. 157 (1986). "The Miranda Safeguards come into play whenever a person in custody is subjected to ether express questioning or its functional equivalent" Innis, 446 U.S. at 300-01

Petitioner was under arrest when police executed the violent De-facto arrect by Stopping my car at gunpoint and ordered me out of my car window at gunpoint. 6-ER-1287. Petitioner told police at the time of my arrest that: Sir I am not answering no question Sir. 3-ER-513 There is no Plainer invocation of Silence. The District Court erroneously determined that this was an "anticipatory invocation" that should be given no effect whatsoever, but in the case the Court relied on, 1-ER-47, fn. 1, the defendant was not yet under arrest. Petitioner Stated: You guys dont undstand what's going on here. 3-ER-512; 3-ER-577. Police was aware of my invocation to silence 4-ER-744-45, Officer Blake Hammond challenged Petitioner invocation to silence "And we do understand what's going on, so-" Petitioner said: No sir, you don't, Officer Hammond replied "Okay so you're going to tell me right?" 3-ER-512-14. This was not a "routine booking questions," Navarette v. Sullivan, 672 Fed. App'x 379, 382 (9th Cir. 2019 (unpublished), directly asking for a confession. Petitioner replied to offer Hammond challenge, : Yes then I immediately to told officr Hammond not to you, speak to detective 3-ER-5141, the first gestion after officer Hommond turned on his body camera were: "You're not carrying anything crazy, are you?" from that point many Statements made by Police and questions asked Hammond "but he's not given me anything more says he doesn't want to talk" 3-ER-527. "Solid effort" 3-ER-533. Officer Hommond transported me to do a one man ID, the witness Eliot Wexler told police I was not the suspect he had saw leaved the bank. 3-ER-526. Officer Hommond "I'm being Sneaky I'm sneaky as hell" 3ER-538. Officer 12 "Someone's going to want to look at you"! I told Police I already asked for an Attorny 3-ER-546 (inaudible) body camera "if you try to run it will add more charges"! 3-ER-546, Officer 12 "You never Know when you need to Shed Stuff". Officer Hammond "Right of course" 10-ER-2646, but in the body camera transcript stated defferent from the video played in Court "No. It's okay. Just (inaudible) Let me know when you need to Shed Stuff" 3-ER-547. Which show someone Jimmy the transcript. Officer Hammond re-engaged his questioning again, but Petitioner told him I had invoked my right to silence and to have an attorney, Officer Hammond realized he was caught violating Miranda and Fifth Amendment when asked me "Are you from Phoenix here?" I said no, Officer Hammond then asked "No? How long you been in Phoenix"! This is when officer Hommond tried to cover his tracks when I remined him I had invoked silence and requested an Attorney. Officer Hammond: "Oh okay. Sorry. I get it. I'm that dude, I like talk to the uber driver and Stuff when I'm going out. I get it you don't want to talk. I'm sorry. I Shouldn't have asked you any questions. I wasn't trying to ask you any questions like that. I was just trying to say, hey you know

,and just have a conversation, you Know but I get it. we're not there yet. 3-ER-55D-1. These constant questioning while I am under Police custodial arrest were not "routine booking questions" Officer Hammond was interrogating Petitioner. Remember Officer James Ferree had took my Picture after he had placed handcuff on my wrists 10-ER-2619. Would a trained Police officer like James Feree placed me in handcuff after that violent arrest, took my picture without concent pick up alleged robbery note he claimed fall from my hands and did not read me Miranda rights?, Officer Ferree false claimed just don't make any sense at all. Officer Ferree was the Officer who had asked; "Just help us out. Vivian Earle" and I told him Sir I'm not answering no questions Sir". "Officer Ferree: Okay are we on the same page? I'm not asking you about any crime you committed but are you is your name Vivian Earle". 3-ER-513. These action and questions police should've Known would likely to produce incriminating response or information. The above persistent questioning and action demonstrated that my invocation to silence would not be "Scrupulously honored" after all. The Judge concluded that Offier Hammond's questioning was done simply to clarify whether Petitioner meant to halt questioning. 1-ER-49, that excuse is only available if the invocation is ambiguous, Berghuis v. Thompkin, 560 U.S. 370 (2019), and clearly it was not. The Judge claimed Officer Hammond questions was "casual conversation", 1-ER-51, but expressly asking me to explain "what was going on" and how long I had been in Phoenix, both were likely to produce incriminating responses. Even casual conversation made to "ingratiate" the suspect to officers can contribute to custodial interrogation, Navarette, 762

Fed. App'x at 382 (unpublished), violating my right to remain silent. Since that was actual interrogation - if not its "functional equivalent, Innis - it was reasonably likely to change Petitioner's mind about my Strong intial invocation to silence. Another clearly erroneous finding was despite over three apparent invocation to silence and some quantity of "inaudible ones, 4-ER-814-18, the Judge found "Defendant never invoked his right to counsel or silence" before arriving at the station. 1-ER-74-75. Offier Ferree read Miranda rights and I invoked my right to have an Attorney, and to remained silent, but because he took my picture and officers interrogated me after I had invoked silence not one officer would admit that Miranda rights were read 4-ER-799-800.

At police headquarters Petitioner repeatedly peppered agent Paul Lee about his right 12-ER-2945-3004: Does it matter is it beneficial to have a lawyer presen 12-ER-2905. So What I'm Saying now is this going to like go against me or what. 12-ER-2969. I'm just trying to see, do I need an attorney. 12-ER-2984. When then agent Lee responded that I should tell him if I needed a lawyer, I asked: So you guys have attorneys here on site or What.

For the reasons Stated above this Court Should grant Certiorari to address this issue.

The District Court Violated Petitioner's Sixth Amendment Confrontation Rights By Allowing The Supervising DNA Expert to Testify About Lab Technician's Findings And The Court of Appeal Erred

The DNA Expert's Opinion Was Based On The Truthfulness And Reliability Of The Testing Done By Six Absent Lab Technicians; Violating The Confrontation Clause of the Sixth Amendment

DNA testing provided prosecution critical evidence from Petitioner's car: Petitioner's DNA was identifed Within the latex mask, 7-ER-1541, and was not excluded from multiple contributors inside the gloves, 7-ER-1534-44. The government moved for a pre-trial ruling that it could admit the DNA testing don by six Quantico "biologists" through a single FBI supervisor, Mr. Fletcher. 3-ER-417-28. The motion discussed Melendez-Diaz v. Massachusetts, 557, U.S. 305, 11 (2009) and Bullcoming v. New Mexico, 564 U.S. 647, 663-65 (2011), 3-ER-421, but ultimately relied on Williams v. Illinois, 3-ER-422. The Petitioner acknowledged that Williams is ripe for reconsideration by the Supreme Court, due to change in the makeup of the court, the Judge granted the government's motion. 3-ER-409-10; 1-ER-42. Thus, when expressing his opinion identifying the DNA, Mr. Fletcher testified about What the lab technician's did and What they found from their testing, 7-ER-1536; 7-ER-1539-44. It included not only his Conclusions drawn from their reports, but also introduced their Statements

Shortly before Petitioner's open brief was due, this Supreme Court handed down Simth v. Arizona, 602 U.S. _ (2024), abrogating Williams. The Confrontation Clause "applies in full to forensic", Smith, 602 U.S. at *3, so "When an expert relies on absent analyst's Statement as part of offering his opinion," and it is for the truth of the matter asserted, then the Confrontation Clause is implicated. Id.

The facts of Smith resonate with Mr. Fletcher's testimony here. In Smith, a lab techician did the analysis and prepared a report, but another expert relied on her report to testify. Smith, 602 U.S. at *5. He described "the precautions (She said) She took, the Standards (She said) She followed, the tests (She said) She performed, and the results (she said) She obtained", Id. at *10, but he had no personal Knowledge of her testing. Id. at 9* This left Smith with no opportunity to challenge the veracity of her claims underlying his opinion. Id. at *8. The Court concluded:

If an expert for the prosecution conveys an out-of-court Statement in Support of his opinion, and the Statement supports the opinion only if true, the the Statement has been offered for the truth of what is asserts Id. at *8. Consequently, the expert's testimony violated the Confrontation Clause. Here, Mr. Fletcher testified about the 5-step process to analyze DNA, 7-ER-1574; 7-ER-1543, and that the lab techmicians followed those steps. 7-ER-1541; 7-ER-1543. Each step was done by different technicians. 7-ER-1590. He described how they collected the samples off the mask and gloves. 7-ER-1540; 7-ER-1549-50; 7-ER-1552-53. He reported their conclusions: the mask's DNA was from "a single individual," 7-ER-1541, the left glove's DNA from four persons while the right glove had DNA from three, 7-ER-1543-44, and that the DNA was from a male. 7-ER-1553. Though he wrote the report, Mr. Fletcher used the absent lab technicias work and report as the basis for his report. 7-ER-1592.

The Court of Appeals for the Ninth Circuit Erred in Denying Petitioner's Motion to Appoint an Attorney to Draft a Petition for a Writ of Certiorari the Court Decision Conflict with Supreme Court Decision in Wilkins v. United States; Doherty v. United States and Schreiner v. United States and other Circuit aswell United States v. Howell

The Court Should Grant Certiorari Because Denying Petitioner Motion to Appoint an Attorney Voilates Petitioner's Statutory Right to have an Attorney Draft a Writ of Certiorari Therefore this Court Should Settle the issue of Whether it is a Constitutional Right to have an Attorney Draft a Writ of Certiorari.

Petitioner requested Counsel to filed a writof of Certiorari because I Knew the Panel would affirmed my Conviction by ignoring the law. Petitioner also moved the appeals Court Stating my position to have Counsel draft and file my petition for Certiorari to this Court [Doc. 73]. When they in fact affirmed my Conviction on May 30, 2025, [App. A. at 1] Petitioner Emailed Counsel to file a petition for Certiorari to this Court, instead She file a petition for Rehearing by Panel or by En Banc [Doc. 77] [App. H. 31] Petitioner again move the Court [Doc. 78-79]; [Doc. 82]; [Doc. 74] The Court Denied the Petition for Rehearng [Doc. 81] Petitioner Email Counsel again requesting her to draft a petition for Certiorari at first Counsel Claimed she might if there is areason to file She then Say she would because she looked at [Rule 10 of the

Supreme Court], Which is hard to believe because attorney Donna Elm has litigated in this very Court before, out of the blue Counsel moved to withdraw from the case [Doc. 85]. The Court of Appeals Granted Counsel's motion [Doc 86-87], thereafter Petitioner moved the Court to appoint an attorney to draft my Petition for a writ of Certiorari [Doc. 88] the Court denied Petitioner's motion to appoint Counsel [Doc. 89]. Petitioner then move the Court to reconsider its denial [Doc. 92], Petitioner received no response, Petitioner move the Court again for an inquiry on the above motion [Doc. 93-94] but got no response, then finally i got a respond [Doc. 94] Stating that the case is Closed, and returning my motion for inquiry.

Petitioner has a Statutory right to the assistance of a lawyer in drafting Petitioner's petition for Certiorari to this Court. As this Supreme Court held in Doherty v. United States, 404 U.S 28, 30 L Ed 2d 149, 92 S. Ct. 175, that right is not Conditioned on Counsel's appraisal of the merits of the petition. No Conditions are attached to right under [Fed. Crim Proc. 44 and the Criminal Justice Act of 1964]. Given the serious Statutory right violation in this matter the Court should Grant Certiorari to address this issue on Constitutional grounds. [FRCP 44] [CJA 1964, 18 U.S.C 300A]

The Court Decision to Deny Petitioner an Attorney to Draft a writ of Certiorari Conflicted with Scheiner v. United States; United State v. Howell; Wilkins v. United States

In Wilkins v. United States, 441 U.S. 468, 470, 99 S. Ct. 1829, 60 L. Ed. 2d 365 (1979) (per curiam) (explaining that Court appointed

Counsel's failur to file Certiorari petition violated Third Circuit's CJA plan, but (not addressing Constitutional grounds.)

This Court should resolve this issue, because even though Petitioner has a Statutory right to have a lawyer draft a writ of Certiorari that did not Stop Court appointed attorney from moving to withdraw, the appeals Court ignoed the Stutory right to have Counsel by graning withdrawal and thereafter denied Petitioner motion to appoint an attorney to draft a petition for a writ of Certiorari

Therefore the Question of Constitutionality shoud be resolve by this Court. A Defendant request to the Supreme Court for a petition for a writ of Certiorari, very important, because the granting of Certiorari is a Continuation of the appeal process and not a Collateral attack on the Conviction. Therefore the Court denial of Counsel to draft petition for Certiorari is a denial of an oppertunity to Continue appeal process if Certiorari is granted by this Court. Defendant's have a higher burden on 2255 motion and Habias Corpus.

The Question Raised in This Are Important and Unresolved

The Ninth Circuit Court of Appeals denying Petitioners Statutory right to have Counsel file a writ of Certiorari, makes it even more clear that this Court should settle the question of Constitutionality pertaining to having a lawyer to draft petition for Certiorari has yet to be answered directly by this Court. Therefore this Court Should Grant Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vivian A. Earle

Date: September 29, 2025