PROOF OF SERVICE ACCORDING TO PRISONER MAIL BOX RULE

This service and mailing was conducted by a party to this action and was conducted in accordance with facility practice and the Title 15,div.3 section §3142, also Penal Code § 2601(b).

This mailing was inspected and sealed in the presence of an on duty correctional officer, in a fully pre-paid envelope that was addressed to the following,

UNITED STATES DISTRICT COURT
3470 Twelfth St.Rm.134
Riverside California,92501

California Attorney General
Attn;D.Delgado
Box 85266
S.d.,Ca.92186

This service contained the following ;

NOTICE OF MOTION FOR EVIDENTIARY HEARING
POINTS AND AUTHORITIES IN SUPPORT THEREOF

This service was conducted by an adult over the age of 18 years of age,, and mailed in compliance with ordinary daily mail practices and routines that are processed and del;ivered by the U.S.P.S. from the city of;

Coalinga (city) and 93210 (zip code)

This service was conducted on))) 12/15/14 Date

ACCORDING TO THE PRISONER MAIL BOX RULE
THIS SERVICE IS CONSIDERED FILED ON THE DATE OF THE SERVICE

UNDER THE PENALTY OF PERJURY

The forgoing of this proof of service is the truth to the bets and direct klnowledge of;

John Henry Yablonsky — 12/15/14 Date

My adress is Box 8500 Coalinga,ca.93210

John Henry Yablonsky AL-0373
Box 8500
Coalinga,Ca.93210

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT,CENTRAL DIVISION

John Henry Yablonsky,
Petitioner,

Vs.

Scott Fraeunheim(warden),
Respondent,

EDCV 14-01877-PA (DTB)

MOTION OF NOTICE OF MOTION IN SUPPORT OF PETITIONERS MOVEMENT FOR AN EVIDENTIARY HEARING,BASED UNDER Townsend v. Sain,372 US 293 (1963)

Filed; September 4,2014
The Honorable Magistrate D.Bristow

Petitioner moves this court for an order of an Evidentiary hearing, pertaining to the state courts inadequate and unfair applications of the state court FACTS + DECISIONS with regards to numerous ground brought in petitioners habeas corpus.

In a proceeding instituted in a federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgement of a State Court, a determination after a h earing on the merits of a factual issue, made by State Court of competant jurisdiction in a proceeding to which the applicants thereof writ and the State or an officer or agent thereof were parties, evidence by a written finding,written opinion,or other reliable and adequate written indicia,shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear,

or the respondent shall admit--

1) That the merits of the factual dispute were not resolved in the state court hearing

2)That the factfinding procedur e employed by the state court was not adequate to afford a full andf fair hearing.

3)That the material facts were not adequately developed at the state court hearing.

4)That the state court lacked jurisdiction of the subject matter or over the person of the applicant in the state court proceeding.

5)That the applicant was an indigent and the state court,in deprivation of his constitutional right,failed to appoint counsel to represent him in the state court proceeding.

6)That the application did not receive a full and fair,and adequate hearing in the state court proceeding.

7)That the applicant was otherwise denied due process of law in the state court proceeding,or

8)Or un less that part of the record of the state court proceeding in which the determination of such factual issue was made,pertinant to a determination of the sufficiency of the evidnece to support factual determination,is produced as provided for hereinafter, and the Federal Court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record.

In cases in which the state court invoked the protection of section 2254(d) in a timely fashion, the statue established a four stage process for determining the effect of state court factfindings;

* A threshold issue was whether the record revealed that a state court with jurisdiction had made a qualifying factfinding,i.e. general,an explicit or at least clearly inferrable determination of the merits of a question of historical fact.

* If so, a second issue was whethter the state procedure for finding the fact was "Full,Fair,and adequate" and whether "The material facts were adequatley dedveloped at th ,e state court hearing.

* If so, a third issue was whether the factfinder in question was "fairly supported by the state court record".

*If so, the state court factfinding was subject to a presumption of correctness that was rebuttable only,"by convincing evidence"

The Antiterrorism and Effective Death Penalty Act of 1996(AEDPA) repealed the former section 2254(d) and replaced it with two new provisions dealing with state court factfindings and fact finding procedures,28 U.S.C. §§2254 (d)(2) and 2254(e)(1);

> (d) An application for writ of habeas corpus on behalf of a person in custdy pursuant to the judgement 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 the facts in light of the evidence presented in state court proceeding.
>
> (e)
>
> (1)In a proceeding instituted by an applieation for writ of habeas corpus by a person in custody pursuant to the judgement of a state court,a determination of a fac tual issue made by state court shall be presumed to be correct. The applcant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence

Petitioner relies on the records in respondnents notice of lodgement

6)Petitioners writ of habeas in State court #WHCSS1200311

7)Order requiring informal response #WHCSS1200311

8)District Attorneys response to petition

9)Second order requiring briefing as to whether to stay writ.

10)District attorney's brief for stay

11)Petitioners brief for stay

12)Order declining stay

13)Order denying petition #WHCSS1200311

Petitioner then will ask this court to consider the petitioners motion to rule (Exhibit Attachment A9-17) titled motion to rule. (EXHIBIT A-2)Petitioner then applies the standards set forth above inthe courts of Townsend (1-8)in determining whether the state court under their ruling,opinion, or determinations met the threshold of the Townsend courts in requiring an evidentiary hearing.Whether the state courts provided and applied practicle "Full and fair" hearing, or decisions based on the facts or appliaations of law.

Ground one; Where petitioner argued that the County District attorney before trial vouched for defendants guilt in a re-election flyer he mailed to every home in the county.

Petitioner relied on the applications of (exhibit A) in this filing and the authority of U.S. v. Boylan,898 f2d 230,261(1st.cir.1990);U.S. v. Kelly,140 f3d 596,608(1st.cir.1988)(Quoting ,Cargle v.Mullin,317 f3d 1198,1218(10th.cir.2003) (prosecutors statement that state does not prosecute innocent people improper because "[i]t is always improper to suggest a defendant is guilty merely beaause he is being prosecuted.)"Then indisated at least four jurors had admitted a possible prejudice.Petitioner then in (motion to rule) applied U.S. v. Wilson, 149 f3d 1298(11th.cir.1998);Gentile v.State 991)501 US 1030.

The trial court suggested that because this material was discussed in trial, it had been pro.perly addressed **(Incorrect)**and the impact of (any) of that material can be litigated on appeal.The State court relied on lack of jurisdiction to [consider] that calim. **(exhibit A12)(schedule of conflict)**
(ONE OR MORE TOWNSEND REQUIREMENTS APPLY HERE,EVIDENTIARY HEARING IS REQUIRED)

Grounds Two; Petitioner argued that the transcript given to the attorney had been altered for interrogation. Petitioner applied P.C. §1473(false evidence)42 U.S.C. § 1001, and applied that this arguement was addressed to the showing to the jury of the altered version, hiding miranda requirements.The courts addressed this being altered interrogation shown to the jury. The court considered that respondent stated that there is nothing to suggest any evidence was altered by the prosecution.(see exhibit B1-B2)also(exhibit Z, three sets of the same interrogation that are different)**(THIS EVIDENCE WAS WITHELD FROM THE PETITIONER UNTIL AFTER TRIAL, AND ONLY AT THE INFLUENCE OF THE STATE BAR ASSOCIATION)**(see exhibit B3) (where the attorney's noted indisate when this proo f) was first provided)
The courts opinion that (conclusory allegation) were unsupported, and that the allegation of altered recordings did not meet the burden threshold.(exhibit P2) (shows that discovery was requested on March 21,2009)CALIFORNIA V. TROMBETTA,467 US 479 (1984)
(THE COURT DID NOT ADDRESS THE ARGUEMENT AND THEREFORE,ONE OR MORE OF TOWNSEND REQUIREMENTS APPLY HERE,EVIDENTIARY HEARING REQUIRED)

Gropund Three.Petitioner argued the attorney did not investigate all areas of the case,test evidences,or provide a defense. Petitioner broughtthat there was DNA located at this scene (several) and one being a red hair with the root bulb attached, and that this hair was reddish(petitioner was blonde) and that this hair could match the man who confessed.Petitioner applied Strickland v.Washington, 466 US 668(1984);People v.Ledesma(1987)43 cal.3d 171.Petitioners motion to rule

he reminded the court of the [many] evidences from this case, and that the states experts provided testimony that the petitioners DNA was older than the crime by at lewast one and a hlf full days, up to several days before the crime was committed. (RT471:4-11)(RT490:25-491:16)The state court opinion was that petitioner must demonstrate the counseldperformance was deficient, and that the deficiency prejudiced hoim(quoting Strickland v.Washingtom,466 US 668(1984)The court then applied InRe Hardy(2007)41 cal.4th 977,(If an ineffective assistance claim can be resolved solely on the basis of lack of prejudice, then there is no need to seperatley determine whehther the counsels performasnce was deficient.THIS CLAIM WAS OF THE MANY INVESTIGATIONS ON THE MANY DNA'S LOCATED AT THIS CRIME SCENE BUT THE COURT FOCUS WAS ON THE DNA THAT WAS OLDER THAN THE CRIME BY !1½ FULL DAYS UP TO SEVERAL DAYS.The court then suggested that additional testing of DNA was speculation. Here there was no testing [NONE].The court then opined that the testing [could] have shown that another mans DNA was also present,but even if it were true (and it bears repeating that there is [nothing] in the petition or exhibits demonstrating that to be so)LAST TWO SENTENCES OF THE INITIAL PETITION SAY "[D]efendant hair is blonde,the [red] hair was found on the body and man that confessed, his DNA at scene,his hair is red.) Here the petitioner told the court this evidence existed, while the court alluded to make it'de determination, it ignored the petition all together. (exhibit J,K) WILLIAMS V. TAYLOR, 529 US 362 (2000) WIGGINS V. SMITH, 539 US 510 (2003)

(THE COURT DID NOT PROPERLY ADDRESS THE ARGUEMENT,ONE OR MORE OF TOWNSEND APPLY ,EVIDENTIARY HEARING REQUIRED)

[THIS ERROR APPLY TO GROUNDS 15 through 18 of this PETITION]

Ground Four;Petitioner argued the the prosecutor presedted four witnesses that gave perjured testimony,as well as the prosecutor hiomself.(DDA Thomas)(John Sullivan)(Daryll Kramer)(Bruce Nash)(Detective alexander)Petitioner applied Shih Wei Su v.Fillion,335 f3d 119(2nd.cir.2003: NAPUE V. ILLINOIS, 360 US 264 (1959)

(exhibit C1-4, support the prosecutors mistatment)(Exhibit D1-2,support the mistatewment of Detective Alexander)(exhibit E2-9,support the mistatement of Nash) (Exhibit F2-13,supprt the mistatments of Sullivan)(Exhibit G2-12,suppoert the mistatement of Kramer)

Here the court entered his opinion of the mistatments as opinions of inconsistancies between various witnesses testimony, and police reports, and statements over two decades b efore the trial.The court submitted it's lack of jurisdiction to consider them ı that it relied on the record eevedence outside the record,it faile. The court then implied the clai m failed because peti tioner has made no showing that [any] of the evidnece introduced was false.That respondent concedes there are some inconsistancies in testimony such as Bruce Nash, and Sullivan.States that inconsistant statements evidence,however,is not synonomous with false evidence,eve if the inconsistancies diminsh a witnesses credibility.The court then suggested petitio ner asseesssment of the impact of those inconsistancies does not demonstrate that false evidence was used at trial.

Here in petitioner response, he detailed just how every false statement was used to influence the jury view of the evidence, and where the victim was last know to go. The key testoimony was that Detyective Alexander made false and misleading staements withregards to the fingerpring report.

This ground was seperarted because fo the courts ruling, and deliberatley ignoring the seperate statements or their effect.The courts interpretation of pejury is is far too prejudicial, and makes it's showing on the face.

(This ground is applied to grounds three,four,five,six, and seven here)

(THE COURT IMPROPERLY APPLIED THE AUTHORIITY OR THE FACTS,LACKED JURISDICTION, AND MEETS ONE OR MORE OF TOWNSEND,EVIDENTIARY IS REQUIRED)

"

"

Ground five, Petitioner argues that the detectives interrogated the defendant outside MIRANDA requirements, Petitioner appli ed Miranda v.Arizona, 384 US 436(1966); Malloy v.Hogan, 378 US 1(1964); Ill v.Perkins, 496 US 292(199); Sprotsy v.Buchler, 79 f3d 635(7th.cir.1996)(custody though defendant was home, gaurded by several officers (here the offivers were detectives[identified]) and questioned for several hours. The court here declared lack of jurisdiction. The court then respo nde d that the petitioner did state that the unaltered evidnece "recording'" would have shown this. Stating the petitioner did not feel free to leave, and that when he did try to leave and end the interrogation but was coersed through a locked facility, and the presence of several officers (in uniform)showing he was under arrest. The court suggested that because there was no evidence before the trial or appeal court (this court does not consider)That the [conclusory] allegation about altered evidence do not warrant habeas relief.

(This is ground twenty-seven here)

(THE COURT EITHER DID NOT APPLY THE CORRECT CIRCUMSTANCES OR MISINTERPRETED THE FACTS, LACKED JURISDICTION, AND MEETS ONE OR MORE OF TOWNSEND, EVIDENTAIRY REQUIRED)

Ground six, Petitioner argued that the state court did not set the beyond -reasonable doubt threshold standard. Petitioner relied on Clark v.Arizona, 548 US 735(2006); Winship, 397 US 538, 364(1970)The court declared this claim was not cognizable under In Re Lindley(1947)29 cal.sd 709,.

The petitioner outlined that petitioners DNA was not on the murder weapon (the victim was strangled with a litigature wire), That the other DNA's at the scene belonged to another person, and the petitioners DNA was older than the murder by more than one full day

(This is ground twenty-eight here)

(THE COURT DID NOT EVEN CONSIDER ANY ACKNOWLEDGEMENT OR COMMENT, AND MEETS ONE OR MORE OF TOWNSEND, EVIDENTIARY IS REQUIRED)

Ground seven,Petitioner argued IAC and Conspiracy to alter evidence and then peresenting it to the jury.Petitioner applied Strickland v.washington,466 US 668 (1984),People v.Ledesma(1987)43 cal.3d 171.Petitioner outlined the interrogation recording being altered, and that all [transcripts] were altered. That the version of the interrogation shown to the jury was missing 26 pages.

(AT THIS TIME PETITIONER WAS STILL BATTLING FOR DISCOVERY THAT WAS BEING WITHELD)

(petitioner has since discoverd that all state parties participated in this act)

(see exhibit B1-2,and exhibit Z [three seperate sets of the same interrogation])

The court combined the two seperate arguements (ground 2 and 5) as the same standard of view.The court states that petitioner places an extraordinary amount of suignificanc on the altered transcript, suggesting there is no basis for this that further efforts to show what thwe fofficer did or did not bekieve regarding his car would likely change the trial}s outconme.Because there is no showing how a more complete recording could have changed the trial'. outcome,or how the attorney's actions could have [OBTAINED SUCH A RECORDING] his claim fails. Here the arguement was that the attorney conspired to alter the evidence, after the attorney was already given an altered version, altering it more.The court then stated the conclusory allegations the counsel conspired to alter evidence does not warrant habeas.

(This directly is related to ground twenty-six here)(Where the entire state team in incorporated into this fground, after the records were releaedd_)

(THE COURT DID NOT CONSIDER THE MERIT,OR DISCOVERY PRESENTED, THIS MEETS ONE OR MORE OF TOWNSEND, EVIDENTIARY IS REQUIRED) FED. EV. C. Rule 901

MOONEY V. HOLOHAN, 294 US 103 (1935)
CALIFORNIA V. TROMBETTA, 467 US 479 (1984)

Ground eight,Petitioner argued that the attorney witheld evidence from the defendant in an attempt to hide the investigations necessaary for this case.Petitioner applied Strickland v.washingtom,466 US 668(1984)The court opinion was that petitioner could not make showing how [more]"(FURTHER)" investigations would have revealed,or how it would have changed the trial outconme.

Evidentiary 9

(Here grounds nine through twenty-six apply)

The courts magnificent view of an attorney's investigation practices relied on In Re Hardy,supra 41 cal.4th at 1025)

The court applied no standards for evaluations of the claim under Strickland, or any othe federal authority. MICKENS V. TAYLOR (2005) 535 US 162

THE COURTS OPINION OF THIS GROUND WAS NOT CONSIDERATE TO Strickland,THIS MEETS ONE OR MORE OF TOWNSEND,EVIDENTIARY REQUIRED.

Ground nine,Petitioner argued that trial attorney did not challenge the false evidence by states witnesses Nash,Sullivan,Kramer,Or Detective Alexander.

The co urt view on this ground was based on trial tactics, that the attorney's failure to attack,or impeach the testimonies of these witnesses bears great emphasis that counsels performance is presumed competant. That failure to object to inadmissible evidence is ultimately a tactical decision. U.S. V. BAGLEY, 473 US 667 (1985)

(Let this court see that the state court recognized the false testimonied as inadmissibble evidence) The court suggests that petitioner could not show the objections would have been successful, and that attorney's are not required to make objections that would be futile.Here there is no indication of whether the court would have entertained the objections or not(CERTAINLY WITH THE DISCOVERY THE ATTORNEY HAD INHIS POSSESSION WOULD HAVE INFLUENCED THE COURTS VIEW ON THE OBJECTION)The court put great emphasis on the attorney's decisions throughout this trial, while the entire heart of the petition developed from the attorney's witholdoing of the evidences and (empty) investigations effort.

ABA MODEL RULES OF PROFESSIONAL CONDUCT

Rule 1.4 Lawyers are required to keep the client informed to the extent necessaary regarding the representation.

Rule 45.2 Lawyers are to make decisions [only] after consulting with client

A) What witnesses to call

B) When and how to examine cros examine witnesses

C) What juror to accept or strike

D) What trial motions to make

E) [WHAT EVIDENCES TO INTRODUSE

California Rules of Professional Conduct

Rule 5-200 Trial conduct

A) shall not employ,for the purposes of maintaining the causes confided to the member such means only are consistant with the truth;

B) Shall not seek to misled to the jury, judge,judicial officer, by an artifice or false statem,ents of fact ,or law

(This error applies to grounds nine through thirteen)

(FALSE TESTIMONY IS SYNONOMOUS WITH FALSE EVIDENCE, THEREFORE CHALLENGABLE) ESTELLE V. MCGUIRE, 502 US 62 (1990)

(THE COURTS OPINION MEETS ONE OR MORE OF TOWNSEND,EVIDENTAIRY REQUIRED)

Ground ten,Petitioner argued th at trial court refused to allow defendant to invoke farretta (sixth Amendment right)Petitioner appl ied People v.Hamilton(1988) 45 cal.3d 351(However trial court must grant postverdict request for self-representation as a matter of right) The court opined lack of jurisdiction, that this can be litigated on direct appeal. U.S. V. DAVIS, 285 F.3d 378 (5 CIR. 2002) JOHN-CHARLES V. CALIFORNIA, 646 F3d 1026 (9TH CIR 2011)

The court

(THE OCURT ERROR IN INQUIRY, MEETS ONE OR MORE OF TOWNSEND,EVIDENTRIARY REQUIRED)

(This is ground thirty here)

Ground eleven,Petitioner argues that the trial court committed prejudicial error in not inquiring into the attorney's mistatements of facts during a marsden hearing with regards to the court view on credibility,petitioner versus attorney.Petitioner applied People v.hamiltion(1988)45 c3d 351;People v.Marsden(1970) 2 Ca3d 118;Strockland v.washingtom,466 US 668(1984)The court relied on lack of jurisdicition for this matter. MICKENS V. TAYLOR (2002) 535 US 162

(THE COURT DECISION MEETS ONE OR MORE OF TOWNSEND,EVIDENTAIRY HEARING REQUIRED)

"

Ground twelve, (HERE THE TRXAL COURT MUST OVER LOOK BECAUSE PETITIONER ASKED THE APPELLATE COUIRT TO DISMISS THIS GROUND FROM FEAR IT WOULD AFFECT THE DIRECT APPEAL THAT WAS BEING CONDUCTED)

The court did declare lack of jurisdiction to this matter, which should be considered here.

(This ground is under thirty eight here)

(THE COURT ERROR MEETS ONE OR MORE OF TOWNSEND, EVIDENTAIRY HEARING REQUIRED)

Here the District court has before them an actual dispute with regards to the state courts view and applications of the FACTS To THE entire case that was brought before them in the Habeas Corpus #WHCSS1200311. This respondnat relies on the lowe r courts denial, then mistates the facts himself, all of which eliminate the factors that aee determined in the "Fair and full" hearing on the facts and how the courts interpret them.

There is a severe discrppency in how the lower courts and the respondnet now interprets the trial attorney's investigations. While both parties (court, respondnat) believe the petitioners claim that [no] investigations were done, to a plea for more investigations. There were no investigations [at all] other than phone calls, e.mails, or brief interviews by an investigator to the state witness only. Even then, this attorney brought not one segment of the interviews, nor challenged the state witnesses that were contradictory to the states detectives investigators of their own witness. This style of investigations is what the Courts in Strickland interpreted, when discussing the need for investigations to reveal applicable, reliable and mitigating evidence

which would have affected the decisions of the jury. Here the jury was deadlocked.There was not a matter of decision making as to whethet to present the investigations result, becuase none existed. This was not a matter of whether the results of the tests were valuable to the defense. The atoorney's own actions in his courtroom conduct, had nothing to rely, except the states records, which were brought, fraudenlently and deceptively, and because of no investigations on behalf of the defendants attorney, he had nothing to challenge them, therefore forfeited his client right to a fair trial, of impartial jurtors.

On the matters et set forth in this motion, in the petitioner writ of habeas corpus, petitioner requests this court to conduct a "Full and fair' " evidentiary hearing on the disputed matters.

Appoint a referee to review the records, as the investigations representative has presented, and allow the defendant (petitioner) to present to errors that violated his substancial interests regarding The United States Constitution.

Petitioner is an indigent inmate, and would ask this court to appoint a compatant,conflict free attorney to represent the petitioners interest with regards to this dispute.

Respectfully;

Date_____

John Henry Yablonsky

Declaration made under the penalty of perjury

I John Henry Yablonsky swear this to be the truth and accurate information to the best of my knowledge in the afore stated facts, and interests in this request for an Evidentiary Hearing.

Date_____

HJohn Henry Yablonsky

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT,CENTRAL DIVISION

John Henry Yablonsky,
Petitioner,

VS.

Scott Fraeunheim(warden),
Respondent,

EDCV 14-01877-PA(DTB)

NOTICE OF POINTS AND AUTHORITY IN SUPPORT OF NOTICE OF MOTION FOR AN EVIDENTIARY HEARING UNDER TOWNSEND V.SAIN,372 US 293 (1963)

Filed;Seoptember 4,2014
The Honorable Magistrate D.Bristow

A State court fact determination is inadequate and a Federal hearing is required if,for example;

A) Whether a confession or guilty plea waa voluntary,see e.g. Thompson v.Keohane,516 U.S. at 109-13(dicta);United States v. Gaudin,515 U.S. 506,525-26(1995)(Rehnquist,C.J.,concurring) (voluntariness of confessions is"mixed question [] of law and fact")Withrow v.Williams,507 U.S. 680,683-94(1993)(voluntariness of confession is subject to independent federal review.

B) Whether the petitioner was in "custody"and subject to "interrogation" at the time he made inculpatory statements to police officer in the absence of Miranda rights,or whether the petitioner waived constitutional or MIranda right,see e.g.Thompson v.Keohane 516 U.S. at 106-07(revolving lower court "division of authority"

on question "whether state-court 'in custody' determinations are matters of fact entitled to a presumption of correctness under 28 U.S.C.§ 2254(d),or mixed question of law and fact warranting independant review" by "hold[ing] the issue whether a suspect is 'in custody' and therefore entitled to Miranda warnings,presents a mixed question of fact and law qualifying for independent review)";CF.Endress v.Dugger,880 f2d 1244,1249 (11th.cir.1989),cert denied,495 U.S. 904(1990)("Whether the functional equivalent of interrogation has taken place is a mixed question of law and fact," but whether "express interrogation occured" is a question of fact(emphasis added));Medeiros v.Shimoda,889 f2d 819,822(9th.cir.19889),cert.denied,496 U.S. 938(1990)("district courts conclusions that [petitioner] was subjected to custodial interrogation is essentially a factual determination");Terronovona v.Kincheloe,852 f2d 424,428(9th.cir. 1988)(Both rejecting 7th circuit precedent to contrary and holding that waiver of Miranda rights is mixed question subject to de novo review.

C)Whether counsel's representation was constitutionally ineffective including both whether counsel's performance was "unreasonable" and if so, whether counsel's failings "prejudiced" the petitioner, see e.g.Thompson v.Keohane,516 U.S.99,109-13(1995)(dicta);Kimmelman v.Morrison,477 U.S.365,378-80(1986);Strickland v.Washington 466 U.S. 668,698 (1984)("[I]n a federal habeas challenge to a state criminal judgement,a state court conclusion that counsel rendered effective assistance is not a finding of fact binding on the federal court to the extent stated by 28 U.S.C.§ 2254(d).

Ineffectiveness is not a question of 'basic,primary,or historical fact],'Townsend v.Sain,372 U.S.293,309 n.6(1963). Rather,...it is a mixed question of law and facts.... .[B] oth the performance and prejudice componants of the ineffectivenenss inquiry are mixed questions of law and facts.")

D) Whether the state or state trial judge engaged in misconduct in violation of the Due Process Clause,see e.g.,Darden v.Wainwright

477 U.S.168,178-83(1985)(independent reviewing question whether prosecutor's arguement at a capital sentencing phase violated due process);Fero v.Kerby,39 f3d 1462,1473(10th.cir.1994),cert. denied,515 U.S.1122(1995)("allegations of prosecutorial misconduct present mixed issues of law ands fact, subject to de novo review");Dickson v.Sullivan,849 f2d 403,405-08(9th.cir.1988) (Whether statements by deputy sheriff to jurors affected jury's deliberations or verdict is mixed question);United States ex rel.shaw v.DeRobertis,755 f2d 1279,1282 n.2(7th.cir(1985)(question whether unconstitutional prosecutorial misconduct occured is mixed question)

E) Whether evidence improperly suppressed or misrepresented by the prosecution was material,see e.g.Kyles v.Whitley,514 U.S.419 441-42(1995)(review of "materiality"of suppressed evidence de novo); id at 457 (Scalia,J.,dissenting)(Acknowledging by way of"CF". citation of 28 U.S.C.§2254(d),that "materiality" question under review is not question of fact);United States v.Gaudin,515 U.S. 506,511-14,519-22(1995)(question"'whether [a] statement was material to [a] decision' "is" a mixed question of law and fact' ",;Questions of "materiality,""pertinance,"and "relevance" are mixed questions of law and fact);Copper v.Wainwright,807 f2d 881(11th.cir.1986),cert.denied,481 U.S.1050(1987)(hearing required to determine whether mitigating evidence unconstitutionally excluded from edsentencing hearing "is poobative and,if so, whether its ommission may affected the outconme of petitiioers' senrtencing proceedings")

F) Whehther a judicial evidentiary or other ruling was an abuse of discretion or otherwise sufficient to deprive the petitioner of Due Pro cess,see e.g.Estelle v.McGuire,502 U.S. 62,70-72(1991) (independent reviewing que stion whether introduction of evidence of prior bad acts violated Due Process);Lesko v.Owens,881 f2d 44,50(3rd.cir.1989),cert.demied,493 U.S. 1036(1990)("Whether an error reaches the magnitude of a constitutioinal violation is an issue of law,subject to plenary review"

(citing Sullivan v.Cuyler,723 f2d 1077,1082(3rd.cir.1983); Williams v.Maggio,730 f2d 1048,1049-50(5th.cir.1984)(Judge's ignorance of his own discretionary power);Hickerson v.Maggio,691 f2d 792,795(5th.cir.1982)(per curiam);Dickerson v.Alabama,667 f2d 1364,13689-69(11tyh.cir.,cert.denied,459 U.S.878(1982)

G) Whether the petitioner was denied the 6th Amendment right to confront adverse witnesses,including the often subsidiary question whether an absent declarant was "inavailable",see e.g.Lilly v.Virginia,527 U.S.116,136(1999)(Confrontation Clause analysis of "whether a hearsay statement has particularized guarantees of trustworthiness,,,,,[is] fact-intensive,mixed question [] of Cohstitutional law ,"which,like other such questions,requires"' 'independnet review.....to maintain control of, and to clarify, the legal principles' goverming the factual circumstrances necessary to satisfy the protections of the Bill of Rights"); Barrett v.Acevedo,169 f3d 1155,1163(8th.cir)(enbanc),cert.demied, 528 U.S. 846(1999)("[W]hether a hearsay statements violates the Confronatation Clause"is "mixed questions of law and fact" because it "involves the application of legal principles to the historical facts of the case")

H) Whether counsel "in effect" made a waiver of or stipulated away the petitioners rights,see eg Carter v.Sowders,5 f3d 975 980-82(6th.cir.1993),cert.denied,511 U.S.1097(1994)(rejecting state court's and district court's findidngs that counsel waived habeas corpus petitioners 6th Amendment right to confrontation by leaving pretrial deposition of prosecutions witness when petitioner failed to appear);United States ex rel Ross v.Franzen, 668 f2d 933,938(7th.cir.1982)

I) Whether evidence presented at trial was constitutionally sufficient to convict or to make the defendant eligible for the daath penalty,see e.g.Cabana v.Bullock,474 U.S.376,385 n.3,387,390 (1986)(similar)Jackson v.Virginia,443 U.S. 307,323(1979)(although "[a] judgement by a state court appellate court rejected a challenge

to evidentairy sufficiency is of course entitled to deference by the federal courts,...Congress....has selected the federal district court's as precisely the forums that are responsible for determining whether state convictions have been secured in accord with federal constitutional law");Case v.Mondragon,887 f2d 1388,1392(10th.cir.1989).cert.demied,494 U.S. 1035(1990); O'Blasney v.Solem,774 f2d 925,927(8th.cir.1985)(sufficiency of evidence to convict);Hawkins v.LeFevre,758 f2d 866,871 n.7(2nd. cir.1985)(same);Greider v.Duckworth,701 f2d 1228,1233 n.8(7th.cir. 1983)(federal courts reviews historical facts to determine whether state met reasonable doubt threshold burden for conviction)

J) Whether the jurors understood the instruction given at trial to misallocation or misdescribed the burden of proving the petitioners guilt or otherwide mistate the law.or whether the jury instruction otherwise deprived the petitioner of due process or of some other constitutional right,see e.g. Francis v.Franklin,471 U.S.307,314(1985);Mullaney v.Wilbur,421 U.S.684(1975) see also,Mills v. Maryland,486 U.S.367,377-78(1988)(questions whether instruction unconstitutionally caused jury to refrain form considering mitigating circumstances found by less than all 12 jurors is matter of law subject to de novo review)

K) Whether a legal violation was"harmless:,Brecht v. Abrahamson ,507 U.S. 619,640,642(1993)(Stevens,J.Concurring);id.at 655-58()'Connor,J.Dissenting);Yates v.Evatt,500 U.S. 391,404-05 (1991)(in overturning state postconviction court's conclusion that improper instruction constituted harmless error,court reviews question de novo,albeit without discussion of proper standard review);Arizona.v.Fulminante,499U.S 279,295(1991)(direct appeal case)("The Court has the power to review the record de novo in order to determine an error's harmlessness");Johnson v.Gibson, 254 f3d 1155,1166(10th.cir.,cert.denied,534 U.S.1029(2001)("harmless error is mixed question of law and fact")

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L) Any dispute [t]hat is not so much attached over the elememts of the facts as the significance to be attached th them,Bruni v. Lewis,847 f2d 561,563(9th.cir.,cert.denied,488 U.S.960(1988) (Habeas corpus courts **must** exercise independent judgement as to"legal weight" due facts found by state court);Marino v. Vasquez 812 f2d 499,504(9th.cir.1987)("application of a legal standard to historical facts does not constitute a factual finding entitled to a presumption of correctness under section 2254(d)")Brantlery v.McKaskle,722 f2d 187,189(5th.cir.1984)("If,however,the challenge goes to the inferences drawn from the facts, the reviewing court need not accept the weight,conclusion and may independently examine the weight of the facts.")

Here the court has beeen informed and correctly navigated to the states applications of false evidence, the state relies as [material] and relevant when being considered to certain understanding of [the] facts. These false and altered interpretations directly relate to the [many] grounds of arguement that incorporate them.

The courts blind ey e to the altered transcripts, which too this repspondent relies as the petitio mer has no [proof] and even if he did, they do not apply, because the petitioner cannpot tell the court how they would have directly affected the outcOme of the trial.Even the state court relied on this understanding, even though in petitioiners informal response, they[were] given at least one different application of the truth, and how it would have affected the jury'd vision of the facts.In this habeas in the federal courts, the respondents answer does and should reflect these discrepencies in the facts as they were [used] and interpreted in the influence of the jury's opinions,[of those facts[]].They are not only incorrect in their applications of the facts or their

applications of laws based on those inccorrect facts, but rely on the attorney's failures to challenge, or even review them before he tried to dispute them on their face. These incorrect facts, OPINION AND standards of attorney's effectiveness, direct ly affected the critical staged of this entire case. The petitioners reply [even though lengthy] reveal these many discrepencies in great detail.

It is in the interests of justice, to provide a "Full and fair" hearing with regards to petitioners claim.

Petitioner brings to this court , merits of his motion, points and authority to support his request of the [several] claims in petition Case No. EDCV 14-01877-PA(DTB), that derived from the conviction in state court of the territory of California case number #FVI900518.This court should be aware there are 42 grounds of error in the states conviction, that violate petitioners substancial Constitutional Rights guaranteed in the United States Constitution, Bill of rights, to include the Fourteenth Amendment,and any other relief the Courts find justified.Petitioner prays this court grant an evidentiarty hearing.

(SEE EXHIBITS AND ATTACHMENTS,ATT.A,EXHIBITS A-Z)

Respectfully reque sting;

Date_____ _____

John Henry Yablonsky Pro-se