

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

MICHAEL ANGELO MORALES,

On Habeas Corpus

) Case No. _____

) Ventura County Superior Ct.
) Case No. 17960

**PETITION FOR WRIT OF HABEAS CORPUS AND/OR
WRIT OF ERROR CORAM VOBIS AND**

**REQUEST FOR IMMEDIATE STAY OF EXECUTION
SCHEDULED FOR FEBRUARY 21, 2006 AT 12:01 A.M.**

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re)	Case No.
MICHAEL ANGELO MORALES)	
On Habeas Corpus)	Related to Ventura County Superior Court Case No. 17960

**PETITION FOR WRIT OF HABEAS CORPUS AND/OR
WRIT OF ERROR CORAM VOBIS AND**

**EMERGENCY REQUEST FOR STAY OF EXECUTION SET FOR
FEBRUARY 21, 2006 AT 12:01 A.M.**

TO: THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF
CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE STATE OF CALIFORNIA.

Michael Morales is scheduled to be executed on February 21, 2006. This Petition for Writ of Habeas Corpus/Error Coram Vobis seeks to correct an obvious and terrible mistake that any fair-minded jurist recognizes must be corrected, but which has so far eluded judicial remedy. Mr. Morales is joined by the trial judge, the Honorable Charles R. McGrath – widely regarded as an esteemed, even-handed judge and a good man – in seeking to give practical, legal and moral effect to indisputable evidence that the State’s proof of the special circumstance allegation depended on the testimony of a witness who knowingly lied; and who lied with the knowledge of the trial prosecutor.

More than a decade after Mr. Morales had been sentenced to death, and after this Court had affirmed his death sentence on automatic appeal and denied habeas corpus relief, the jailhouse informant who provided the most damning evidence at trial inadvertently revealed to the Attorney General that it was all a lie. Seeking to enhance his credibility by explaining how he alone managed to obtain incriminating statements from Mr. Morales in a crowded county jail cellblock, the informant – Bruce Allen Samuelson – told the Attorney General in a 1993 interview that he and Mr. Morales had discussed the crime in *fluent* Spanish. Samuelson said they spoke about the case *only* in Spanish – all the time – period. Mr. Morales, however, does not speak Spanish.

If the informant’s blunder had been recorded during a pretrial interview, and disclosed to a reasonably competent defense attorney, the jury could have heard the following cross-examination:

Q. [BY DEFENSE COUNSEL]: Tell us Mr. Samuelson, how were you able to obtain Mr. Morales’s confession to all of these incriminating, sensitive details of the crime while the two of you were in separate jail cells located ten feet apart, and situated on opposite sides of the

cellblock, without being overheard by other inmates, jailers and possible informants?

A. [MR. SAMUELSON]: I asked him if he spoke Spanish, and he said “Yes.” So we started conversing in Spanish.

Q. Are you fluent in Spanish?

A. Very fluent in it, reading, writing and speaking, both formal and informal.

Q. And Mike Morales is fluent in Spanish?

A. Yes.

Q. Were all your conversations in Spanish?

A. If we weren’t talking about his case, we would speak English. And the rest of the time we would talk in Spanish. That’s when the conversation stuck strictly to Spanish, at all times, in terms of his case period.

Q. So, Mr. Samuelson, it sounds as if you would be surprised to learn that Michael Morales does not speak Spanish, is that correct, sir?¹

Knowing that it was impossible to obtain Mr. Morales’s alleged confession in *Spanish* would have led any reasonable, impartial fact-finder further to conclude that Samuelson had not obtained the confession *at all*. Any impartial judge or juror would have seen the entirety of Samuelson’s testimony for the lie that it was. The jury would have rejected the prosecution’s single most important witness whose perjury supplied both the evidentiary predicate for the special circumstance finding, and the equally false description of callous, boastful statements attributed to Mr. Morales, which served as the centerpiece of the prosecution’s aggravation at the penalty phase.

¹ The answers attributed to Samuelson in this hypothetical cross-examination are quoted from the transcript of the Attorney General’s 1993 interview filed with this petition as Exhibit 16 at 71-74.

We now know that the revelation of Samuelson's falsehoods would have prevented Mr. Morales from receiving the death penalty, because the trial judge has said so. Articulating the essential truth of this case, Judge McGrath has cautioned that executing Mr. Morales despite the revelation of Samuelson's lies "would frustrate the design of our sentencing laws, and would constitute a grievous and freakish injustice."

We also know only now – as the result of fortuitous press inquiries – that the trial prosecutor, Bernard Garber, knowingly allowed Samuelson to lie to the jury, including his concealment of the deal for leniency he received in exchange for his false testimony. Alone, or in combination, Samuelson's perjury and the prosecution's misconduct in sponsoring it render Mr. Morales's death judgment unconstitutional and invalid.

Regrettably there is more. The prosecuting authorities in San Joaquin County engaged in concerted efforts to intimidate and coerce witnesses to provide damaging false testimony and to suppress evidence favorable to Mr. Morales. These efforts continue to the present day as the District Attorney attempts to dissuade former employees from speaking with Mr. Morales's attorneys, and prepares to proffer facially perjurious documents in support of the death judgment.

The factual and legal grounds for his requests for a stay of execution and the grant of this petition are as follows:

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. FACTUAL OVERVIEW

1. The Offense

On January 8, 1981, Rick Ortega sought to discourage the victim, Terri Winchell, from telling mutual acquaintances that Ortega was romantically involved

with Ms. Winchell's boyfriend, Randy Blyth. Ortega was aggrieved by the belief that Ms. Winchell's was spreading the word about his sexual orientation.

Ortega decided to enlist the assistance of his cousin, Michael Morales, to frighten Ms. Winchell into silence. The two young men thought they could drive the victim to a remote location, choke her unconscious and then leave her there to awake and find herself abandoned. They never had any intention to seriously harm or kill the victim.

Ortega, however, hoped to ensure that Mr. Morales appeared particularly "scary" by getting him intoxicated on a combination of PCP and fortified wine. The results were disastrous and tragic. When the initial effort to subdue the victim failed, and she began to struggle, Mr. Morales's drug impaired mental state gave rise to a cataclysmic over-reaction. Dissociated from any physical connection with the events, Mr. Morales struck the victim with a hammer more times than he could remember, stabbed and sexually assaulted her.

2. Petitioner Michael Morales

At the time of the events in question, Mr. Morales was a twenty-one year old man who had lived essentially on the streets during the preceding five years of his life. Early experimentation with beer and marijuana under the tutelage of older boys rapidly escalated to consumption of a dizzying array of illegal drugs before he developed an addiction to PCP. The dissociative, anesthetic effect soothed the psychological distress of his chaotic existence. The other face of the drug, however, that is known to induce psychosis, precipitated a rapid decline in his functioning.

Yet, Mr. Morales also retained some remnants of his religious upbringing. As soon as his faculties were clear of the effects of narcotics, he expressed unconditional remorse for his actions, and has since lived with daily and profound sorrow for the loss of life and love that he has caused the victim's family. The

sincerity of his remorse and religious devotion impressed the sentencing judge to count them as factors in mitigation of sentence, but which nevertheless were outweighed by the state's contrary evidence in aggravation, which we now know was based on perjured testimony.

B. LOWER COURT PROCEEDINGS

1. Mr. Morales is unlawfully imprisoned under an unconstitutionally obtained judgment of conviction and sentence of death at San Quentin State Prison by Steven Ornoski, Warden. The judgment was imposed by the Ventura County Superior Court on June 14, 1983, in Case No. 17960.

2. The crime in this case occurred on January 8, 1981. On January 9, 1981, Mr. Morales was lying down and talking to himself – as if he were thinking out loud – that he wished he could turn the clock back and talk his cousin out of seeking revenge on Terri Winchell and that he regretted not having done so. (RT 2781-82.)

3. Mr. Morales was arrested on January 10, 1981.

4. Soon thereafter, Craig Holmes was appointed to represent Mr. Morales.²

5. On January 15, 1981, during the initial “client intake” meeting, Mr. Morales told an investigator for his lawyer about his alcohol and phencyclidine consumption shortly before the crime. (Exhibit 34, Declaration of Luana Horstkotte & Attachment, at 291.)

6. A joint preliminary hearing for Mr. Morales and Mr. Ortega occurred in March, 1981. Both men were held to answer for capital murder.

² Mr. Holmes, is currently the Assistant District Attorney for San Joaquin County, and principal assistant to District Attorney James Willett.

7. Mr. Morales was charged by information with capital murder, (Penal Code sections 187, 190.2(a)(17) [torture]; 190.2(a)(15) [lying in wait]), conspiracy to commit murder (Penal Code section 182), and rape (Penal Code section 261.2).

8. Mr. Morales pleaded not guilty and denied the special circumstance allegations. For a capital murder trial, Mr. Morales's trial was not lengthy.

a. Jury selection took eight full or partial court days, beginning on March 8, 1983, and concluding on March 18, 1983.

b. The prosecutor's case-in-chief took five full or partial court days and the defense case one full or partial court day. (RT 1691 [opening statement of prosecutor]; RT 2466-537 [defense case].)

c. Jailhouse informant Bruce Samuelson was the second to last prosecution witness to testify during the guilt phase. (RT 2330-73.) The prosecutor emphasized his testimony during the relatively brief closing arguments during the guilt phase. (RT 2558-61, 2662-65.)

d. Guilt phase closing arguments occurred on April 5, 1983.

e. The jury convicted Mr. Morales of murder, rape and conspiracy and found the two special circumstances true. The trial court set aside the torture murder first degree verdict.³

f. The penalty phase began on April 19, 1983, and concluded on April 21, 1983. (RT 2745; RT 3076 [closing argument of prosecutor]; 3095 [closing argument of defense counsel].) The prosecutor again focused the jury on Samuelson's testimony near the end of his penalty phase argument. (RT 3093.)

³ On direct appeal, this Court reinstated the torture murder finding, but the United States Court of Appeals for the Ninth Circuit struck that special circumstance as unconstitutional. (*Morales v. Woodford*, 388 F.3d 1159, 1168-69 (9th Cir. 2004).)

9. During the proceedings pursuant to Penal Code section 190.4(e), the trial judge found the prosecution witnesses credible and believable. (RT 3192.) During that hearing, Mr. Morales expressed his sorrow and regret for his role in Terri Winchell's death. (RT 3180-81.) The court acknowledged, as a circumstance in mitigation, the evidence of the defendant's remorse and further his susceptibility to rehabilitation. The court further found the love and concern Mr. Morales had for his children, his religious faith, and the fact that there were people in the community who would provide encouragement and support to Mr. Morales, to be mitigating factors. (RT 3104-05.) The court found, however, that based on the evidence adduced at trial, the aggravating factors outweighed those in mitigation.

C. PROCEEDINGS IN THIS COURT

1. Mr. Morales's convictions and judgment of death are final. He filed a Petition for Writ of Habeas Corpus in this Court on December 16, 1992, and a Supplemental Petition which this Court filed as a separate Habeas Corpus Petition on April 21, 1993. (*In re Michael Morales*, Case No. S030276; *In re Michael Morales*, Case No. S032386.) This Court denied each petition "on the merits and as untimely" without appointing counsel to prepare the petition, providing funds for ancillary services, creating a cause of action, issuing an order to show cause, or holding an evidentiary hearing on petitioner's claims

2. This petition is necessary because Mr. Morales has no other plain, speedy, or adequate remedy at law for the substantial violations of his constitutional rights as protected by the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; the California constitutional analogues; state statutory law, including but not limited to Penal Code sections 190 et seq. and 1473; and international law.

3. The present petition is timely within the meaning of the Supreme Court Policies Regarding Cases Arising from Judgments of Death, Policy 3, sections 1-1.2, 1-2.

a. The lawyer who represented Mr. Morales on automatic appeal was appointed in 1983. This Court issued its opinion, affirming Mr. Morales's conviction and death sentence on April 6, 1989, and issued its remittitur on June 2, four days before the June 6, 1989 issuance of the Supreme Court Policies Regarding Cases Arising from Judgments of Death. These Policies squarely placed on counsel a duty to investigate and present meritorious claims in a habeas corpus petition.

b. Appellate counsel either did not understand he had a duty to pursue collateral relief, or knew of that duty and chose not to represent Mr. Morales. In either event, the result is the same: Mr. Morales was abandoned by counsel and therefore had good cause for any delay attributable to the time period of that representation. (*People v. Sanders*, 21 Cal. 4th 697, 716-19 (1994).)

c. As a result of prior counsel's abandonment, current counsel, appointed by the United States District Court for the Central District of California, filed a Petition for Writ of Habeas Corpus in this Court in 1992 and filed a Supplemental Petition in 1993, while the initial petition was still pending. The Court filed the supplement as a second petition. Counsel received no compensation to prepare the petition, no authorization to pursue any investigation and no investigative funds from this Court.

d. The federal district court refused to authorize nearly all of Mr. Senior's proposed investigation. The federal court authorized Mr. Senior to expend \$2,000 on investigation.

e. On January 10, 2006, this Court appointed Mr. Senior to represent Mr. Morales as executive clemency counsel and authorized him to expend

\$25,000 toward any meritorious investigation. All of the claims – except Claim One – are the product of that investigation as are Exhibits 3, 5, 6, 9-13, 26, 28, 31, 33, 37, and 38.

f. With respect to Claim One, the trial judge was not free to comment on Mr. Morales's case while substantive court proceedings were ongoing. Those proceedings concluded in October 2005, with the United States Supreme Court's denial of Mr. Morales's petition for writ of certiorari. In addition, the factual basis for the claim did not exist until The Honorable Charles R. McGrath wrote to the governor and copied the parties. That occurred on January 25, 2006. Finally, as to that claim, Mr. Morales seeks a Petition for Writ of Habeas Corpus or, in the alternative, a Writ of Error Coram Vobis.

g. The one month that has passed between the Court's authorization to proceed and the filing of this petition does not qualify as delay, let alone undue delay. The lapse of time between current counsel's appointment and the filing of this petition is justified by good cause, i.e., the lack of funding and hence authorization to proceed and the fact that Mr. Morales's case was pending in federal court from 1993 until the denial of his petition for writ of certiorari in October 2005.

h. Mr. Morales is actually innocent of capital murder. With the false testimony of the now thoroughly discredited Samuelson removed from Mr. Morales's case, there is no evidence to support the one remaining chargeable special circumstance, and no reasonable juror would have found Mr. Morales death eligible. Moreover, when the accurate evidence relevant to Mr. Morales's state of insobriety on the night of the crime and his history of severe drug abuse, is combined with evidence that there was no plan to kill the victim, Mr. Morales is innocent of capital murder within the meaning of *In re Clark*, 5 Cal. 4th 750, 787-98 (1993). (See Exhibit 33, Declaration of Pablo Stewart, M.D.; Exhibit 37,

Declaration of Lillie Garcia; Exhibit 28, Declaration of Pat Felix; Exhibit 27, Excerpt of Interrogation of Ricky Ortega.)

i. Finally, the accurate evidence relevant to the appropriateness of the death penalty – again with the thoroughly discredited testimony of Samuelson removed – demonstrates that the profile of Mr. Morales provided to the jury was grossly misleading within the meaning of *In re Clark*, 5 Cal.4th at 979. As urged below, Samuelson’s testimony not only created a false aggravating factor – solicitation to kill two witnesses – but it extinguished the substantial mitigating factor of Mr. Morales’s pre-arrest and continuing deep remorse and regret.

4. Mr. Morales hereby requests that this Court take judicial notice of the certified record on appeal and all of the briefs, petitions, motions, orders, and documents filed in *People v. Morales*, California Supreme Court Case No. S004552; *In re Michael A. Morales*, Case No. S030276, and *In re Michael A. Morales*, Case No. S032386. By this request, Mr. Morales realleges the claims made on his behalf in the automatic appeal and prior petitions for writs of habeas corpus so that they may be considered cumulatively with the claims raised herein in assessing the existence of constitutional error and/or the prejudice flowing from them. Similarly, Mr. Morales incorporates by reference all exhibits filed in support of this petition and the facts contained in those exhibits, and realleges the material in these documents. Mr. Morales makes this request to avoid duplication of the voluminous automatic appeal documents and repetition of facts contained in the exhibits that are already before the Court.

5. Mr. Morales has provided the Court with such documentation as is reasonably currently available to him, given his lack of compulsory process, the difficulty in obtaining documents from governmental and other public agencies, and because discovery pursuant to Penal Code section 1054.9 has yet to be considered and ordered.

6. Because a reasonable opportunity for full factual development through access to this Court's subpoena power and other means of discovery, to perform further investigation, and for an evidentiary hearing has not yet been provided to Mr. Morales or his habeas corpus counsel, and which Mr. Morales requests this Court to provide before adjudicating the claims raised here, the full evidence in support of the claims that follow is not presently reasonably obtainable. Nonetheless, the factual allegations, and reasonably available documentary support set forth below, adequately support each claim and justify the issuance of the order to show cause and the grant of relief.

II. CLAIMS FOR RELIEF

A. CLAIM ONE: MR. MORALES'S JUDGMENT OF DEATH IS UNCONSTITUTIONAL BECAUSE IT WAS THE PRODUCT OF FRAUD, MISTAKE AND MISREPRESENTATION.

The trial judge's considered evaluation of the evidence led him to deny Mr. Morales's automatic motion, pursuant to Penal Code section 190.4(e), to modify the death verdict to one of life in prison without parole. In particular, the trial judge was impressed by Samuelson's description of Mr. Morales's purported confession, the testimony by Samuelson relating to the lying in wait special circumstance and Mr. Morales's alleged solicitation of murder of two prosecution witnesses. (Exhibit 1, Letter by the Honorable Charles R. McGrath.) Bruce Samuelson, however, a career criminal with a long history of violence and dishonesty, committed multiple acts of perjury, known to him and to the state, but not the jury or judge, during his testimony. In addition, unknown to the trial court and jury, Samuelson was a police agent. Mr. Morales's confinement therefore is unlawful and a death judgment was unconstitutionally and mistakenly imposed in violation of his protection against the infliction of cruel and unusual punishments and his rights to due process, confrontation and compulsory process, counsel and

the effective assistance thereof, a trial by a fair and impartial tribunal, the enforcement of mandatory state laws or rights, and guilt, death eligibility and penalty determinations untainted by false testimony and misinformation as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, their state constitutional analogues, state law, including Penal Code sections 190.4(e), 1473, as a result of this fraud, misrepresentation and false evidence.

Upon receipt of additional funds reasonably necessary to fully investigate this claim, and after having a full and fair opportunity to develop this claim through investigation, discovery, expert analysis and an evidentiary hearing, the following facts, among others, will be presented to support this claim:

1. Those facts and accompanying exhibits set forth in Claim Two, Three, Four, and Five, which are incorporated by this reference as if fully set forth herein.

2. Bruce Samuelson testified for the prosecution during the guilt phase of trial. (RT 2330-73.)

3. He falsely claimed that Michael Morales confessed to him and provided information to him about his case. (Contrast RT 2335-41 with Exhibit 15, Polygraph Evaluation of Francis Connolly, dated January 24, 1994, at 62-65; Exhibit 22, Declaration of Ruben Serna, at 93-95; Exhibit 23, Declaration of Frank Moppins, at 141-43; Exhibit 21, Declaration of James Kevin Mahoney, at 85-92.)

4. Among the false details provided by Samuelson were that Mr. Morales confessed to a pre-existing intent to kill Terri Winchell; the preparatory phone calls that occurred before the crime; his rape and stabbing of Ms. Winchell; and the details of the attempted strangulation. (RT 2335-39.) Samuelson also falsely testified that Mr. Morales sought Samuelson's help and expressed a desire to eliminate two witnesses against him. Finally Samuelson falsely attributed crass

and vulgar descriptions of sexual intercourse with the victim to Mr. Morales. (RT 2338-39, 2340-41.)

5. Bruce Samuelson lied about the extent of benefits he had actually received in exchange for his perjured testimony.

a. According to Samuelson's testimony, "it was stated that they [prosecution] would recommend a one-year county jail sentence with a felony conviction." (RT 2341; see also, RT 2371-72 [given a promise of a recommendation].)

b. In fact, Samuelson negotiated his deal directly with prosecutor Bernard Garber while Samuelson's case was pending in municipal court, and that deal was formalized on the record in municipal court on December 14, 1982. (Exhibit 24, Reporter's Transcript of Proceedings of December 14, 1982, at 144-48.)

c. In fact, the promise was far more than a "recommendation." It was a negotiated deal that guaranteed Samuelson felony probation, with a "local" (i.e. county jail incarceration) sentence and no time in state prison. Prosecutor Garber was forced to lobby hard for the deal with the Superior Court Judge. Garber actually begged for the deal, and explicitly explained to the Superior Court Judge that Samuelson would not testify without the deal, and he had to have Samuelson's testimony to prove the special circumstances. (Exhibit 3, Declaration of John C. Schick, Esq. at 5-7; Exhibit 2, District Attorney's Position Sheet on Bruce Samuelson, at 4.)

6. Bruce Samuelson testified falsely that in 1981, the California Youth Authority rejected him because of a "lack of bed space" and "then further revelation came was because I was not amenable to their treatment." (RT 2347.) In fact, the Youth Authority rejected him because he had "an extensive history of delinquent behavior dating back to 1972," i.e. to approximately the age of 12

years. (Exhibit 7, Probation Officer's Supplemental Report for Bruce Samuelson, quoting letter from Department of Youth Authority dated 10/22/81, at 21-23.)

7. Samuelson also lied about his performance on probation, claiming he only tardily reported to the probation officer in July, 1982. (RT 2351.) In fact during his four-month stint on supervised probation, he did not report at all in July or August; in October 1982 in lieu of reporting he telephoned his probation officer, claiming "he was going to be admitted to Stanford Medical Center for chemotherapy on two tumors." (Exhibit 8, Probation Officer's Report for Bruce Samuelson, filed May 26, 1983, at 28.)

8. Unknown to the judge and jury, Samuelson's reputation for honesty and veracity was dismal, and he was a rapist, sexual predator and sexual pervert, who had raped his own sister repeatedly, stole from his own son and family members, and embezzled from employers.

9. Samuelson appeared before the judge and jury as virtually unimpeached and the prosecution exploited the inflammatory, prejudicial impact of Samuelson's testimony in his closing arguments during the guilt and penalty phases.

a. During the guilt phase arguments the District Attorney used Samuelson's testimony to corroborate the testimony of Raquel Cardenas and Patricia Santiago Flores (now Felix), witnesses whom the jurors were free to find were accomplices as a matter of fact, and to remind the jury that Mr. Morales not only had allegedly confessed in graphic and vulgar terms to the crimes, but also allegedly solicited the deaths of Cardenas and Santiago Flores.

b. Toward the end of his penalty phase argument, the prosecutor closely tracked Samuelson's guilt phase testimony in urging the jury to impose a death sentence:

And then finally we have Bruce Samuelson out in the jail and he is telling Bruce Samuelson the belt broke, she fell forward unconscious, he grabbed her hair, pulled her back, started beating her over the head and so on and so forth.

And then finally after all this he drags her out in the vineyard, and he tells Bruce Samuelson she was just too good to pass up so he had sex with her. And then as he walks away he turns and calls her a name.

It's almost as though he is bragging to everybody. He is proud of it. (RT 3093.)

10. Like the prosecutor, who emphasized in his internal handwritten memos before trial that Samuelson was "a key witness in prov[ing] Michael Morales 187 *with specials*," the trial judge recognized Samuelson was the "cornerstone" of the prosecutor's case and "indispensable to proving the lying in wait special circumstance." (Exhibit 1 at 2; Exhibit 2 at 4; emphasis added)

11. Unbeknownst to the trial judge, in May 1983, a month before the judge imposed a judgment of death on Mr. Morales, Samuelson wrote a letter to the probation department, spinning what the probation officer recognized to be a "preposterous story" to justify his 1981 and 1982 crime spree. (Exhibit 6, Declaration of Vickie Hale Wetherell, at 0018.)

a. "At the time, I was laid off by my employer, and as a result formed my own Co. to retaliate against him for his unfair labor practices. As with any new business, struggle (financial) and lack of business set in."

b. "During this period, there was also a family who I am very close to, that was denied welfare" in a decision that Samuelson deemed "not fair." As a result he "took it upon" himself "to obtain money for groceries and bills." This need to right a wrong, with Mr. Samuelson portraying himself as a 20th-century Robin Hood, was offered to account for his crimes in the Spring of 1981

and Fall 1982. Samuelson declined to provide any information about the identity of this needy family. (Exhibit 8 at 0034.)

12. In August 1993, after the conclusion of proceedings in this Court, and while Samuelson was in the middle of his own criminal case in Idaho, an investigator with the Office of the Attorney General interviewed Samuelson.

a. The catalyst for this interview most likely was the declaration of a prisoner who was formerly housed in the six-cell maximum security unit in which Mr. Morales and Samuelson were both located in November 1982. This declaration explained that private conversation between two inmates was virtually impossible in this tank so that it was unlikely that Samuelson would have been able to or did obtain the confession he claimed to have gotten from Morales. (Exhibit 21, Declaration of James Kevin Mahoney, at 85-92.)

b. Samuelson, seeking to explain away this problem, fabricated the superficially plausible explanation – given Mr. Morales’s Spanish surname – that the two conversed in Spanish. Samuelson explained, unequivocally that he was “very fluent” in reading, writing and speaking Spanish and that Mr. Morales was also fluent in Spanish. (Exhibit 16, Excerpts from Transcript of Interview of Bruce Samuelson, dd 8/4/93 at 66-75.)

c. Samuelson, however, is not fluent in Spanish. (Exhibit 5, Declaration of John Carlson at 0014; Exhibit 38, Declaration of Maria Espinoza, at 303-05)

d. Mr. Morales, a third or fourth generation American, does not speak any Spanish. (Exhibit 18, Declaration of John Morales, at 78-79; Exhibit 19, Declaration of Josie Morales, at 80-82; Exhibit 17, Declaration of Lisa Flynn, at 76-77; see also Exhibit 20, Declaration of Leonard Lucero, at 83-84.)

e. This gaff by Samuelson is not simply indicative of untruthfulness in 1993. Rather, it shows the entirety of Samuelson’s testimony at

Mr. Morales's trial in 1983 was false because it was factually impossible for Samuelson to have extracted the confession, and for Mr. Morales to have solicited potential witness killings while in the small, six-cell, six-man unit with Samuelson because they could not have spoken in Spanish. They would not have spoken in English because even Samuelson acknowledged they would not have privacy if they did so.

f. This critical impeaching fact was not available or known to the trial court in 1983 or this Court in 1992 or 1993 because the interview producing this devastating lie was conducted after this Court denied Mr. Morales's habeas corpus petitions.

13. At the hearing on Mr. Morales's automatic Penal Code section 190.4(e) motion, the trial court found the prosecution witnesses to be credible and believable and denied the motion to modify the death verdict.

14. If the trial judge had been informed that the "cornerstone" of the prosecution evidence against Mr. Morales -- the "indispensable" testimony of Samuelson -- was flawed, he would not have upheld the jury's verdict. (Exhibit 1 at 1-3.) He was induced by fraud and false evidence to make the tragic mistake of upholding Mr. Morales's death sentence. A Writ of Error Coram Vobis lies to correct this error. This fraud and false evidence deprived Mr. Morales of the protection of the state's mandatory modification proceedings as set forth in Penal Code section 190.4(e).

15. But for this fraud and perjured testimony, Mr. Morales would have been sentenced to life without possibility of parole. This Court should grant petitioner a Writ of Error Coram Vobis. Alternatively, if the Court believes such a writ does not lie, the Court should treat this request as part of the request for a writ of habeas corpus, grant the writ and modify Mr. Morales's sentence or return the matter to the trial judge so that he may do so.

B. CLAIM TWO: THE PROSECUTOR COMMITTED MULTIPLE ACTS OF MISCONDUCT IN VIOLATION OF MR. MORALES'S CONSTITUTIONAL RIGHTS IN THE PRESENTATION OF BRUCE SAMUELSON'S TESTIMONY.

The prosecution's indispensable witness for proof of the special circumstance allegation, Bruce Samuelson, had compiled a debilitating reputation as a liar and an extensive record of criminality involving crimes of moral turpitude by the time he was called to testify against Mr. Morales. He had no compunction about lying to probation officers, judges, family members, employers, and, of course the jurors and judge in Mr. Morales's case. The prosecutor was fully aware of Bruce Samuelson's character and knew of his particular, numerous and egregious lies. The prosecutor intentionally breached his affirmative duties to disclose material exculpatory evidence (including impeaching evidence) and refrain from actively presenting knowingly false or misleading evidence; protect the system against the use of false testimony; avoid the creation of false inferences; and advocate in a manner consistent with his constitutional duty to "serve truth and justice first," rather than "tack as many skins of victims as possible to the wall."⁴ Mr. Morales's lawyer also breached his duty to his client through a lackadaisical investigation and cross-examination that enabled Samuelson to face the jury cloaked in a false coat of veracity.

As a result of this conduct, Mr. Morales's confinement is unlawful and his convictions and death sentence were obtained in violation of his rights against compelled self-incrimination, and to due process, a fair trial, a fair and impartial jury, the effective assistance of counsel, confrontation, compulsory process,

⁴ See *United States v. Kojayan*, 8 F.3d 1315, 1323 (9th Cir. 1993). Accord, *Berger v. United States*, 55 S. Ct. 629, 631 (1935) ("It is as much [the prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.").

present a defense, the enforcement of mandatory state laws, adequate due process notice of the evidence against him, and fair, reliable, rational, non-arbitrary, and accurate determinations of guilt, death eligibility, and penalty by a jury that was not mislead and infected by false and misleading evidence, inferences, and argument as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, the state constitutional analogues, Penal Code section 1473 and other state statutory law and international law.

Upon receipt of adequate funds reasonably necessary to fully investigate this claim and after having a full and fair opportunity to develop this claim through investigation, discovery, expert analysis and an evidentiary hearing, the following facts, among others, will be presented to support this claim:

1. Those facts set forth in Claims One, Three, Four, Five and the exhibits cited therein, and the facts in the exhibits cited herein as if fully set forth in this Claim.

2. The prosecutor knowingly elicited false and perjurious testimony from Samuelson about the contours of his agreement with the prosecutor and the nature of the benefits provided to him in exchange for his testimony.

- a. The prosecutor intentionally elicited from Samuelson the testimony that the offer from the District Attorney in exchange for his testimony was no more than “it was stated that they would recommend a one-year county jail sentence with a felony conviction.” (RT 2341.) Samuelson reiterated on cross-examination that the only promise made was “for a recommendation.” (RT 2371.)

- b. That testimony was materially false. In December 1982, the prosecutor and Samuelson negotiated an explicit agreement together whereby Samuelson would testify against Mr. Morales in exchange for which Samuelson would plead guilty to two of the six felony charges against him, the rest would be dismissed and he would receive probation with a guarantee of “local time,”

meaning a sentence of no more than a year in the county jail, rather than a commitment to state prison. Because of the custody credits Samuelson already had accumulated, the disposition essentially allowed him to be released soon after he testified. Additionally, he did not face any additional punishment for violating his existing felony probation. (Exhibit 24 at 144-46)

c. The Superior Court judge was so reluctant to approve the deal that the prosecutor had to push very hard, literally begging the judge to let the deal go forward because the prosecutor “had to have the deal.” He explained that he needed Samuelson’s testimony to secure a capital murder conviction against Mr. Morales and that Samuelson would not testify without a guaranteed deal. (Exhibit 3 at 6.)

d. In order to seal the deal, the prosecutor had one of his investigator’s administer a polygraph to Samuelson. The investigator was not a qualified polygrapher, but he pronounced Samuelson truthful. (Exhibit 14, District Attorney Investigation Report by Lee Copeland re Polygraph, at 60-61.) Evaluation of the test data and results by a reasonably qualified and certified professional polygrapher would have revealed that Samuelson was deceptive in his answers denying that he obtained his information about the case from a source other than Mr. Morales. (Exhibit 15, Confidential Report by Francis M. Connolly, at 62-65.)

e. When the Superior Court judge finally approved the deal, he warned the prosecutor that “the next time” he would not care if Mr. Samuelson “turned in Attila the Hun,” the judge would not approve another deal for Samuelson. (Exhibit 3 at 6.)

f. The plea bargain greatly upset Samuelson’s probation officer, who expressly asked the judge assigned to the case to take note of Samuelson’s criminal history and lack of compassion for the victims in sentencing Samuelson.

The probation officer “had no doubt” that but for the plea bargain, Samuelson would have been sentenced to prison. (Exhibit 6 at 19.) The probation officer described Samuelson as anti-social, and found his handwritten letter to the probation department attempting to justify his conduct as particularly shocking. (Id. at 18.)

g. The prosecutor exacerbated his unconstitutional behavior during Samuelson’s testimony by later expressly arguing at the conclusion of the guilt phase that “in exchange for his testimony he was given *an offer of a recommendation* that he get a year in jail, a maximum of a year in jail instead of state prison.” (RT 2558; emphasis supplied.)

3. The prosecutor did not correct, and knowingly allowed, Mr. Samuelson to offer false testimony and commit perjury by testifying that his probation violation stemmed only from the new criminal charges and his tardy appearance in July 1982 at his probation officer’s office. (RT 2349-51.)

a. In fact, Samuelson was released from jail in June 1982 and made one appearance, rather than the required monthly visits to his probation officer.

b. He failed to report to his probation officer at all in July and August. He appeared in September only in response to a “come in” letter.

c. In October, he telephoned his probation officer with the “highly implausible excuse” that “he was going to be admitted to Stanford Medical Center for chemotherapy on two tumors.” (Exhibit 6 at 17.)

d. By the following month, November 1982, Samuelson had committed new burglaries, car theft, and absconded to Arizona, where he was arrested in a stolen car.

e. He also failed to make any payment on the \$1,711.78 in ordered restitution. (Exhibit 8, Probation Officer's Report for Bruce Samuelson, filed May 26, 1983.)

4. The prosecutor knowingly allowed Samuelson to offer perjured testimony that he was rejected from the California Youth Authority in 1981 "because of a lack of bed space." Samuelson added the "further revelation" was "because I was not amenable to their treatment." (RT 2347.) Samuelson was in fact rejected by the Youth Authority because of his "extensive history of delinquent and criminal behavior dating back to 1972." (Exhibit 7, Probation Officer's Supplemental Report for Bruce Samuelson, filed December 1982, at 21.) The prosecutor also knew that Samuelson was on Youth Authority parole at the time he committed the 1981 felonies and that the probation department recommended a prison sentence. (Exhibit 6 at 18; Exhibit 7 at 22.)

5. The prosecutor knowingly allowed Samuelson to commit perjury and testify falsely that Mr. Morales solicited Samuelson to murder trial witnesses Patricia Santiago Flores (Felix) and Raquel Cardenas; that Mr. Morales admitted a pre-existing plan or intention to kill the victim; that Mr. Morales confessed to the crime; and that Mr. Morales confessed to raping the homicide victim and described the incident in vulgar terms. The prosecutor was aware that the configuration in the maximum security unit and the existence of a two way intercom system made the private communication described by Samuelson virtually impossible. (Exhibit 23 at 142-43; Exhibit 20 at 83.)

6. The prosecutor was aware of Samuelson's extensive juvenile record, yet he created the false impression that Samuelson was a nonviolent thief, burglar and forgerer. (RT 2558-59.) Had Samuelson's juvenile record been disclosed and investigated, the jury would have learned that Samuelson was violent and a habitual liar.

a. Unknown to the judge and jury – but known to the prosecutor – Bruce Samuelson had a lengthy juvenile record, including rape. (Exhibit 6 at 17.) Samuelson’s juvenile record, though not available to the public was available to the prosecutor and showed that Samuelson’s sister was the victim of his rapes.

b. Minimal investigation into the rape allegations would have revealed that Bruce Samuelson was “a very violent abuser who terrorized” his sister by “sexually assaulting” her when they were teenagers. His violent abuse changed her life forever; for years she “felt the same pain and fear again” and had terrible nightmares from which she “woke up crying and sweating.” (Exhibit 9, Declaration of Bruce Samuelson’s Sister, at 37, 42) Samuelson’s sister would also have been able to provide the jury with a litany of examples of Samuelson’s violent, assaultive conduct; his ability to lie his way out of trouble; and his unimaginable cruelty toward his sister. (Exhibit 9 at 37-42)

7. The prosecutor falsely argued repeatedly to the jury that he did not need Samuelson’s testimony to attain guilt verdicts against Mr. Morales. (RT 2559, 2664.) The prosecutor’s own handwritten notes that Samuelson was “a key witness” and his begging for the negotiated deal – neither of which was known to the jury or trial judge – represent the prosecutor’s actual assessment of Samuelson’s critical importance to his case. (Exhibit 2 at 4; Exhibit 3 at 6.)

8. The prosecutor was aware that Paul Hermann, a Stockton businessman and the principal victim of Samuelson’s 1981 and 1982 crimes, believed that society had to be protected from Bruce Samuelson “by whatever means necessary.” Hermann discussed his beliefs with Samuelson’s probation officer. (Exhibit 8 at 29.) The prosecutor was in contact with the probation officer. (Exhibit 2 at 4.) Had Mr. Hermann been contacted by Mr. Morales’s trial counsel or by the prosecutor the jury would have heard the following information:

a. Mr. Samuelson burglarized Paul Hermann's family-owned commercial real estate business in May 1981 and twice more in 1982.

b. Hermann recognized the earmarks of a sophisticated thief in Samuelson's method of stealing checks from the middle, not the top of the stack; he then used the office typewriter to type his name, and he made each check out for a small enough amount that it would not arouse suspicion and would be cashed at a retail store without verifying the validity.

c. When he was caught, Samuelson lied and denied breaking into the office. Hermann exposed this lie with the fact that his mother found Samuelson's name imprinted on the typewriter ribbon.

d. After he pled guilty, Samuelson wrote a letter of apology and then asked Hermann for a job. He burglarized Hermann twice after making that apology and request for employment.

e. Hermann believed that Samuelson's deal, about which he had no knowledge before it was cut, was "irresponsible." Had he known about it, he would have protested. Had he been contacted, he would have testified, based on his family's extensive and unfortunate experience with Samuelson, that he was a "liar and manipulator who would deceive anyone to get ahead without regard to the consequences." (Exhibit 13 at 57-59.)

9. The prosecution knew that in a May 10, 1983 letter to the probation department, Samuelson provided elaborate incredible fantasies to explain his crimes in 1981 and 1982. The prosecutor refrained from disclosing these incredible justifications with the trial judge, and sat silent as the judge pronounced all of the prosecution witnesses credible and believable in June 1983 during the Penal Code section 190.4(e) proceedings. Samuelson's rationales included the following:

a. “At the time, I was laid off by my employer, and as a result formed my own Co. to retaliate against him for his unfair labor practices. As with any new business, struggle (financial) and lack of business set in.”

b. “During this period, there was also a family who I am very close to, that was denied welfare” in a decision that Samuelson deemed “not fair.” As a result he “took it upon” himself “to obtain money for groceries and bills.” This need to right a wrong, with Mr. Samuelson portraying himself as a 20th-century Robin Hood, was offered to account for his crimes in the Spring of 1981 and Fall 1982. Samuelson declined to provide any information about the identity of this needy family. (Exhibit 8 at 26.)

10. Samuelson’s pre-trial career as a liar, thief, and sexual predator was mimicked by his post-trial pattern of behavior and gives a lie to the prosecution’s current assertion that had there been a post-conviction evidentiary hearing “Samuelson’s credibility would have been readily demonstrated.” (Opposition to Petition for Executive Clemency at 15.)

a. From 1983 until at least 1994, Samuelson was a violent batterer and spousal abuser. (Exhibit 38, Declaration of Maria Espinoza, at 303-05; Exhibit 11, Declaration of Sarah Samuelson, at 46-51; Exhibit 26, Excerpt of Court File in *State v. Samuelson*, County of Ada, Fourth Judicial District Case No. HCR20074, at 158, 160.) He was a sadistic child abuser as well. (Exhibit 12, Declaration of Bruce Samuelson, Jr., at 53, 54-55; Exhibit 10, Declaration of Sabrina Samuelson, at 43-44.)

b. Samuelson was a violent sexual predator, and a sexual pervert, who repeatedly forced himself on minors. He was fired from a job as telemarketer for the Special Olympics because he made lewd phone calls to women he was soliciting for donations. (Exhibit 11 at 47- 48.)

c. He repeatedly stole other people's identities and ran up large debts in their names. His victims included a lawyer in Oregon and his own son and namesake. (Exhibit 10 at 44; Exhibit 11 at 49; Exhibit 12 at 53.)

d. He habitually embezzled money and stole goods from his employers; he defrauded insurance companies, failed to pay rent, and vandalized numerous businesses for amusement. (Exhibit 11 at 48-50; Exhibit 10 at 44.)

e. In light of this enduring pattern of deception, opportunism and deviancy, it is unlikely that any court would find now that Mr. Samuelson's credibility can be readily demonstrated.

11. The state has a continuing duty to correct the injustices wrought by false and perjurious testimony and yet it still stands mute. Now that the state is aware of Bruce Samuelson's false testimony, reputation, and character, it should join Mr. Morales in seeking a new trial, a new penalty phase, or at least the imposition of a sentence of life without possibility of parole. As nearly everyone who knows Bruce Samuelson has expressed in one way or another, they "find it appalling that a man may be put to death because of [Samuelson's] lies and manipulations." (Exhibit 12 at 43.)

12. The continuing violations of Mr. Morales's constitutional rights and the grievous constitutional wrongs at trial had a substantial and injurious influence and effect on the fact finder. Cumulatively or alone the errors were prejudicial in that Mr. Morales otherwise would not have been convicted or sentenced to death.

C. CLAIM THREE: THE ADMISSION OF BRUCE SAMUELSON'S TESTIMONY VIOLATED THE CONSTITUTION BECAUSE HE WAS AN UNLAWFUL POLICE AGENT.

At the time Bruce Samuelson engaged Mr. Morales in conversation and attempted to question him about the charges against him, Samuelson was a police agent within the meaning of *United State v. Massiah*, 377 U.S. 201 (1964). He had

an established relationship with law enforcement, was already trying to inform on another inmate, James Kevin Mahoney, and was placed in the maximum security tank so that he could elicit information. When he was unsuccessful in eliciting incriminating information from Mr. Morales, he used his placement in the tank and proximity to Mr. Morales as an opportunity to fabricate a confession and gain access to legal paperwork in Mr. Morales's possession. For these reasons, Mr. Morales's confinement is unlawful and his judgments of conviction and death were unconstitutionally obtained in violation of his protection against the imposition of cruel and unusual punishment and his rights to due process, a fair trial, counsel, the effective assistance of counsel, reliable determinations of guilt and punishment, confrontation, a fair and impartial jury, and a trial free of materially false and misleading evidence as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, their state constitutional analogues, state statutory law and international law.

Upon receipt of adequate funds reasonably necessary to fully investigate this claim, and after having a full and fair opportunity to develop this claim through investigation, discovery, expert analysis and evidentiary hearing, the following facts, among others, will be presented to support this claim:

1. Those facts set forth in Claims Two and Four, and in the Exhibits cited therein, which are incorporated by this reference as if fully set forth herein.

2. At the time Samuelson was placed in the maximum security tank in the San Joaquin County Jail, Mr. Morales was represented by counsel and criminal proceedings had been initiated against him.

3. Samuelson engaged in activity that went beyond mere listening. He was acting as a government agent, i.e., under the direction of the government

pursuant to a preexisting arrangement, with the expectation of some resulting benefit or advantage.

a. Samuelson was placed by law enforcement in a six-cell maximum security tank housing offenders whom the jail personnel identified as gang members or whose charges involved violent felonies. Mr. Samuelson's inmate classification profile did not fit in either category, and his placement there was highly irregular. (Exhibit 22, Declaration of Ruben Serna, at 93-95.)

b. On December 6, 1982 Samuelson handed prosecutor Garber a letter pursuant to and evidencing their pre-existing relationship including but not limited to work he was already doing for the prosecution in the James Mahoney case and explained that he had "further testimony" in that case. (Exhibit 4, Letter from Bruce Samuelson Handed to Prosecutor Bernard Garber on December 6, 1982, at 8.)

c. His work for the government on the Mahoney case apparently began during the second week of November. (Exhibit 21, Declaration of James Kevin Mahoney, at 85-92.)

d. In his note, Samuelson guaranteed a first-degree murder conviction with special circumstances. (Exhibit 4 at 8.) Someone familiar with the case would have had to tell Samuelson what special circumstances were charged against Mr. Morales and the legal elements of them.

e. Samuelson concluded his note by promising his prosecutorial patron that the information he had concerning Mr. Morales was going to be "quite a bit more than you expected." (Id. at 9.) In order for the prosecutor to have any expectation, there had to have been a pre-existing relationship and discussion of what the prosecutor wanted, needed, or expected.

f. Samuelson expected and bargained vigorously for a benefit. While the benefit fell short of his written requests in Exhibit 4, they were

nonetheless substantial. He and the prosecutor memorialized the deal on December 14, 1982 in municipal court during an unreported conference with the two of them and the municipal court judge. (Exhibit 24 at 144-45.) The bargain was a *quid pro quo* for testimony that the prosecutor knew he needed. (Exhibit 2, District Attorney's Position Sheet on Bruce Samuelson, at 4; Exhibit 3 at 6.)

g. Samuelson admitted his status as a police agent to his former crime partner once he was released from custody in 1983; he also admitted that Mr. Morales did not "give him any details about the crime," and that the confession was "really 'filler'" that he needed to get his deal from the District Attorney. (Exhibit 5, Declaration of John Carlson at 15.)

4. Samuelson deliberately and aggressively questioned Mr. Morales. (Exhibit 21 at 87-88.)

5. The violation of Mr. Morales's constitutional rights was prejudicial. Although Mr. Morales did not answer Samuelson's questions, Samuelson's agency status enabled him to be in sufficiently close proximity to Mr. Morales to make his claims that Mr. Morales confessed plausible to lay jurors and to look at Mr. Morales's legal paperwork concerning his case.

6. But for the testimony of Mr. Samuelson, Mr. Morales would not have been convicted of first degree special circumstances murder.

7. The constitutional violation therefore had a substantial and injurious influence and effect on the jury's determination of the verdicts at the guilt and penalty phases.

D. CLAIM FOUR: THE PROSECUTION VIOLATED MR. MORALES'S CONSTITUTIONAL RIGHTS BY COERCING, THREATENING, BRIBING, AND FRAUDULENTLY OBTAINING AND SUBSEQUENTLY INSULATING FABRICATED AND INCRIMINATING TESTIMONY FROM WITNESSES PAT FLORES AND RAQUEL CARDENAS.

The prosecutors, investigators and other personnel of the San Joaquin County District Attorney's Office engaged in concerted efforts including, but not limited to coordinated activities with the California Attorney General's Office and other law enforcement agencies, to coerce, intimidate, threaten, bribe and otherwise force, through the use of fraudulent, unlawful and corrupt methods, witnesses Patricia Flores (aka Patricia Felix) and Raquel Cardenas to give wholly fabricated and incriminating testimony against Mr. Morales at his trial, and to insulate and protect such false testimony against successful or effective cross-examination at trial and from investigation, discovery and disclosure in post-conviction proceedings.

The State officials' intentional, calculated and ongoing misconduct renders Mr. Morales's confinement illegal, his conviction and death sentence unconstitutionally obtained, and prejudicially deprived Mr. Morales of his state and federal constitutional rights to a fair and reliable determination of guilt and penalty, to a trial free of materially false and misleading evidence, to the disclosure of all materially exculpatory evidence including impeachment evidence, and to the effective assistance of trial as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 7, 9, 12, 13, 14, 15, 16, 17, 24, 27 and 28 of the California Constitution, and had a substantial and injurious influence and effect on the jury's determination of the verdicts at the guilt and penalty phases of Mr. Morales's trial.

Upon receipt of adequate funds reasonably necessary to fully investigate this claim, and after having a full and fair opportunity to develop this claim

through investigation, discovery, expert analysis and evidentiary hearing, the following facts, among others, will be presented to support this claim:

1. The prosecution called Patricia Flores (aka Patricia Felix) to provide knowingly false incriminating testimony against Mr. Morales including, but not limited to, her alleged observation that Mr. Morales had practiced placing a belt around her neck, had made admissions regarding his involvement in the victim's death and had assisted Rick Ortega in disposing of physical evidence.

a. Such testimony was the product of the State actors' intentional and unlawful coercion and bribes, which were intended to and did in fact cause Flores to testify untruthfully.

b. In contrast to Flores's trial testimony, Mr. Morales never put anything around her neck or otherwise pretended to harm her in any way, nor did she ever see him handle a belt, a hammer, or a knife during the time in question. (Exhibit 28 at 178, 182.)

c. Flores's trial testimony was further untruthful in all major respects including, but not limited to claiming to have seen Mr. Morales with a broken belt; that Mr. Morales discussed the homicide and/or the manner in which the victim was killed; that Flores attempted to adjust or hang a picture in her apartment on the night in question; that she noticed her hammer was missing; that she took any notice of any knife in her apartment at all; or that she saw blood on Mr. Morales's clothing or in Ortega's car. (Exhibit 28 at 179, 182; Exhibit 29 at 180.)

d. Flores could not and did not observe, hear or otherwise perceive the matters to which she testified at trial because on the night in question she had been in a "wasted," debilitated state due to the combined influence of marijuana and alcohol that she had ingested in copious amounts. (Exhibit 28 at 178-79.) During the time Flores purportedly heard and/or observed the matters to

which she testified, she was in fact lying on a sofa in her living room in a drug-and-alcohol induced stupor. (Exhibit 28 at 179; Exhibit 29 at 180.)

e. On January 10, 1981, at approximately 10:00 a.m., the police arrived at Flores's apartment with a search warrant. The police stormed into the residence in a manner that was calculated to and did in fact terrorize and intimidate the occupants.

(1) One police officer immediately pulled Flores outside, ordered her to sit on a lawn chair, and refused to permit her to attend to the well-being of her children.

(2) Several armed officers proceeded to ransack the house and removed plastic bags filled with unidentified items, while two officers simultaneously interrogated Flores.

(3) Flores truthfully denied any knowledge of the victim's death, in response to which the officers insisted Flores was lying. The interrogating officers subjected Flores to psychological duress, humiliation, and degradation including but not limited to describing the graphic details of the victim's death, and maintaining that only a "junkie" such as Flores would assist with a homicide committed in such a fashion.

(4) The interrogating officers implicitly and explicitly threatened Flores with the loss of custody of her children. The psychological distress and trauma experienced by Flores at the prospect of losing her children, in combination with the stress and humiliation to which she was otherwise subjected by the interrogating officers caused her to suffer an emotional and psychiatric breakdown.

f. The interrogating officers exploited Flores's psychologically impaired condition and held her involuntarily in custody at the scene of the search

for approximately one and one-half hours, during which time they subjected her to a continuous interrogation.

(1) The ongoing interrogation was designed to and did in fact overcome Flores's free will and resistance to the police efforts to force her to adopt an untruthful version of events.

(a) The police exploited Flores's anxiety, fear and hysteria over her separation from her children by keeping her within sight of them and within earshot of their crying, while refusing to let her go to them.

(b) The interrogating officers simultaneously informed Flores that they knew she used illegal drugs and that she was experiencing difficulties with her ex-husband. The officers expressed a degree of familiarity with Flores's ex-husband that was designed to and did in fact alarm her by raising the inference that he had informed the police of Flores's illegal drug use.

(c) Flores became increasingly fearful that she would lose custody of her children, and became desperate to do anything to save them.

(d) The police then arrested Flores, handcuffed her and put her into a police vehicle to be transported to the police station for further interrogation.

2. The police interrogators continued to subject Flores to their badgering, intimidating and psychologically oppressive behavior during an extended automobile ride to the police station. (Exhibit 28 at 180.)

a. The police informed Flores that they had found drugs in the house and, unless she helped them, she would go to jail. They also informed Flores that Michael Morales was a killer and a rapist and that she was liable for prosecution for harboring him.

b. The police falsely claimed that Mr. Morales may have assaulted (sexually) other women and children in the past. The police asked Flores if she took good care of her children and if she knew what Mr. Morales allegedly had done to them. Flores informed the police that she knew Mr. Morales and knew he could never hurt her children.

c. Flores informed the police that Mr. Morales was great with her children, and that she trusted him. The police laughed and ridiculed her, and told her that she sounded like a true junkie.

d. The police explicitly advised Flores that the only way she could save herself was by telling the truth as the police believed it to be. The police informed Flores that they had recovered weapons from her house that had been used to commit the homicide. The police further informed Flores that Mr. Morales confessed to having killed the victim.

e. Flores informed the interrogating officers that she and Mr. Morales had spoken two nights before, but that neither one of them could understand the other because they were both extremely intoxicated.

f. The police explicitly informed Flores that she could save herself only by attesting to the details of Mr. Morales's purported confession to committing the crimes and his efforts to conceal evidence; and further told her that her inability independently to recall such information was attributable to the neurological effects of her drug abuse.

3. The police and the district attorney questioned Flores again on repeated occasions, and recorded her as well. The pattern of multiple interrogations was designed to and did in fact frighten Flores into agreeing to say whatever the police wanted her to say as a means of avoiding a jail term and loss of her children.

a. Flores was frightened that she would go to jail and never see her children again if she did not say what the prosecution wanted her to say.

b. Flores eventually came to accept that she had to say what the prosecuting authorities wanted her to, even if it were not true. The police and the district attorney also reassured her that she was doing the right thing by saying what they told her to say. The police informed Flores that it was settled that Rick Ortega and Mr. Morales killed the victim, and there was no question of guilt.

c. The government agents further assured Flores that she was not harming anyone, and in fact she was only saving herself and her children by cooperating with them. They also told her that although they wanted a death sentence for Mike Morales, it would never actually get that far.

4. The police and prosecutors also offered and paid Flores undisclosed cash payments in exchange for her cooperation.

5. As a result of the foregoing pattern of behavior, the prosecuting authorities succeed in forcing Flores to testify untruthfully to the incriminating information described above, including but not limited to confirming that she and Raquel found blood in the car and that Mr. Morales admitted to killing Terri Winchell. Flores further testified that Mr. Morales had boasted and bragged about the commission of the crime, a fact she affirmatively knew to be false. (Exhibit 28 at 182.)

6. As a further intended result of the foregoing described coercion and *quid pro quo* requiring Flores to give particular testimony in exchange for various undisclosed benefits including, but not limited to, not being separated from her children or prosecuted for numerous drug related felonies and receiving monetary compensation, her testimony was impervious to effective cross-examination.

7. During the police raid of Flores's apartment on January 10, 1981, the police also detained, arrested, handcuffed, and interrogated Raquel Cardenas. The

police interrogated Cardenas for over an hour and a half within sight and earshot of the interrogation of Flores as set forth above. (Exhibit 28 at 180; Exhibit 30 at 204.) At that time, Cardenas knew nothing about the alleged crime was the basis for Mr. Morales's subsequent arrest. (*Id.*)

8. In response to Cardenas truthfully telling the interrogating officers that she did not know anything about the alleged offenses, she was released from police custody, immediately rearrested and confined in juvenile hall for an extended period of late night interrogations. (Exhibit 30 at 205.)

9. The pattern of interrogations consisted of abusive, oppressive, and threatening behavior including but not limited to the interrogating officers' threats to prosecute Cardenas as an accessory to murder; implied threats that Cardenas would be exposed to bodily injury or even death at the hands of other wards; exposure to the facts and photographic evidence in this case; and overbearing, psychologically abusive interrogation techniques. (*Id.* at 205-06.) The interrogating officers also employed an intentional, psychologically assaultive ploy of alternating periods of solicitous and courteous treatment with sadistic, demeaning harangues that was intended to and did in fact persuade, intimidate and coerce Cardenas to give testimony that she and her interrogators knew was materially false and misleading. (Exhibit 30 at 208.)

10. Following Mr. Morales's conviction and the imposition of his death sentence, and continuing throughout the pendency of his direct appeal and post-conviction proceedings in the state and federal courts, the prosecuting authorities made concerted attempts to coerce, threaten, and otherwise intimidate Flores and Cardenas to conceal all evidence of governmental wrongdoing that produced their false testimony.

a. Said attempts included, but were not limited to dispatching teams of armed special agents to the witness's place of employment on the pretext

of conducting a surprise interrogation. The true purpose of such visits was to convey implicit and explicit threats of prosecuting the witnesses should they fail to adhere to the materially false version of events to which they testified at trial.

b. The prosecuting authorities' attempts at concealing the untruthfulness of the witnesses' testimony include, but have not been limited to, directing witnesses not to speak to investigators working on behalf of Mr. Morales, and/or obtaining facially fraudulent documents, signed under penalty perjury, that disavow the witness's recantation of her trial testimony and deny that she was even interviewed by an investigator working on behalf of Mr. Morales.

c. On or about December 14, 2005, law enforcement officials, including but not limited to California Department of Justice investigator David Ikeda, contacted witness Patricia Flores to dissuade her from speaking with any representatives of Mr. Morales. (Exhibit 29 at 184.)

d. Despite the official admonishment, Flores (aka Patricia Felix) agreed to be interviewed and signed a declaration on or about January 25, 2006 explaining, *inter alia*, that her trial testimony incriminating Mr. Morales was materially false in every significant respect. (Exhibit 28.)

e. On or about February 1, 2006, after Flores's declaration had been disclosed to law enforcement officials, Larry Ferrari, the Deputy Chief Investigator of the San Joaquin County District Attorney's Office and Special Agent Rita Sharp of the California Department of Justice converged on Flores's workplace and removed her to an undisclosed location for a tape recorded interrogation, in an attempt to coerce and persuade her to disavow the declaration she executed on January 26, 2006.

f. Prior to and in the course of the tape-recorded interrogation, the law enforcement officials enticed, persuaded and otherwise caused Flores falsely to assert that she had not signed the declaration dated January 26, 2006

(Exhibit 28), nor had she ever spoken to a representative of Mr. Morales. (Exhibit 29 at 184.) Flores was also coached and enticed to state in her declaration that she stood by her trial testimony. (*Id.*)

g. The substance of law enforcement's interrogation, set forth in the transcript accompanying Exhibit 29, shows that in fact Flores confirmed the truthfulness of the statements she made in paragraph 22 of Exhibit 28 (the declaration that she provided to Mr. Morales's investigator), i.e., she did not hear Mr. Morales making incriminating statements, did not see him disposing of any evidence and did not examine Ortega's automobile. (*See* Exhibit 29 at 192.)

h. Flores also confirmed the accuracy of a detail she provided in her January 26, 2006 declaration that Mr. Morales's investigator could have learned only from Flores in explaining why her trial testimony was false. The January 26, 2006 declaration explains that Flores did not really hear or see the things to which she testified because she was "wasted" on the sofa in the living room. This explanation is identical, in sum and substance, to Flores's interview with law enforcement on February 1, 2006, when she stated that she did not actually hear or see Mr. Morales on the evening of the offense because she "never got up to look at Rick's car."

i. Flores's confirmation of the accuracy of her January 26, 2006 declaration, stating that significant aspects of her trial testimony were false, made it reasonably obvious to any minimally competent law enforcement official that Flores could not simultaneously attest to the truthfulness of her trial testimony. Deputy Chief Investigator Ferrari and Special Agent Sharp ignored the inherent contradiction and led Flores to sign a declaration under penalty of perjury that she was in her "right mind" and would "stand by [her] testimony." (Exhibit 29 at 194.)

11. The State actors' demonstrated willingness to coerce and rely on false and misleading testimony at all stages of the capital proceedings against Mr. Morales had a substantial and injurious effect and influence on the jury's determination of the verdicts at trial, and deprived him of fundamental due process and an accurate determination of the legal and factual issues in the automatic appeal and post conviction proceedings.

E. CLAIM FIVE: MR. MORALES IS INNOCENT OF CAPITAL MURDER.

Mr. Morales stands convicted of one count of capital murder and one special circumstance. The "indispensable" testimony to prove the truth of the special circumstance, rendering Mr. Morales death-eligible, came from the constitutionally infirmed, now wholly discredited testimony of Bruce Samuelson. In addition, uninvestigated information about Mr. Morales's history of drug abuse and his drug use on the day of the offense, as explained by a psychiatrist with a specialty in psychopharmacology, show him to be innocent of capital murder.

Consequently, Mr. Morales's confinement is unlawful and his conviction and death sentence were obtained in violation of his protection against the infliction of cruel and unusual punishment and his rights to due process; equal protection; conviction upon proof beyond a reasonable doubt; counsel and the effective assistance thereof; confrontation and compulsory process; present a defense; a fair and impartial jury; reliable guilt, special circumstance, and penalty verdicts by a jury untainted by misinformation; and the enforcement of mandatory state laws as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments, their state constitutional analogues and state statutory law.

Upon receipt of adequate funds reasonably necessary to fully investigate this claim, and after having a full and fair opportunity to develop this claim

through investigation, discovery, expert analysis and an evidentiary hearing, the following facts, among others, will be presented to support this claim:

1. The facts and allegations set forth in Claims One, Two, Three, and Four and the accompanying exhibits are incorporated by reference as if fully set forth herein.

2. Without Bruce Samuelson's testimony that Mr. Morales "confessed" his intent to kill and his testimony about the "preparations" made to commit the crime, no true finding against Mr. Morales on the lying in wait special circumstance would have been possible. (Exhibit 1 at 2.) The prosecutor recognized as much as he solicited Bruce Samuelson's assistance, cut the deal with Samuelson for his testimony, and then begged the Superior Court judge for approval. (Exhibit 2 at 4; Exhibit 3 at 6; Exhibit 4 at 8-9.)

3. Bruce Samuelson has been thoroughly discredited as having testified falsely to Mr. Morales's non-existent confession, solicitation of murder, and crude comments about Ms. Winchell. (Exhibit 5 at 13-15; Exhibit 15 at 62-64; Exhibit 17 at 76-77; Exhibit 18 at 78-79; Exhibit 19 at 80-81; Exhibit 20 at 83-84; Exhibit 21 at 85-89; Exhibit 22 at 93-95; Exhibit 38 at 303-05.)

4. Bruce Samuelson's general reputation for honesty and veracity is extremely poor. Rarely has such a diverse group of individuals -- family members, ex-girlfriends, probation officers, and crime partners -- spoken with such unanimity about the lack of credibility of a prosecution witness. (Exhibit 6 at 17-20; Exhibit 9 at 37-42; Exhibit 10 at 43-45; Exhibit 11 at 46-52; Exhibit 12 at 53-56; Exhibit 13 at 57-59; Exhibit 38 at 303-05.)

5. In addition, as set forth in Claim Four, above, the false and coerced testimony of Patricia Santiago Flores (Felix) and Raquel Cardenas, properly corrected, bolsters Mr. Morales's position that there was no lying in wait. Those

facts, allegations and exhibits are incorporated by this reference as if set forth herein.

6. Rick Ortega informed the arresting officers -- consistently from the time of his initial statement -- that there was never a plan to kill or ambush and kill Terri Winchell. (Exhibit 27, Excerpt from Ricky Ortega's Statement to Law Enforcement on January 11, 1981, at 163-72.)

7. There is no longer any basis for finding Mr. Morales death-eligible. The Court should grant this writ or, alternatively afford him an evidentiary hearing at which he will prove his innocence of special circumstance murder.

8. In addition, Mr. Morales's long history of drug abuse and his intoxication as a result of the consumption of a substantial quantity of a high potency alcohol and of a half of a joint laced with phencyclidine within an hour of the crime, (Exhibit 34 at 289-92), produced a psychotic, disinhibited mental state during which Mr. Morales was not wholly aware of or in control of his actions. (Exhibit 33, Declaration of Pablo Stewart, M.D., at 286.)

a. Beginning at about age sixteen, Mr. Morales was exposed to fortified wines and binge consumption of beer. By his late teens he was using phencyclidine (PCP), sherm (cigarettes dipped in embalming fluid), speed, and other drugs. (Exhibit 33 at 282-83; Exhibit 35, Declaration of Julio Marquez, at 293-94; Exhibit 36, Declaration of Manuel Franco Vasquez, at 295-97.) He was a consistent, chronic, and heavy user of PCP and sherm in particular. (*Id.*; *see also* Exhibit 37, Declaration of Lillie Garcia, at 298-302.)

b. By 1980, Mr. Morales severely abused PCP and was heavily addicted to it. In the six months before the capital crime, his drug and alcohol abuse were very serious. Even small amounts of alcohol and PCP produced changes in Mr. Morales's posture, facial contortions, tensed muscles, agitation and physical aggression. He experienced dissociative episodes. (Exhibit 33 at 283.)

c. On the day of the crime, Mr. Morales drank a bottle of Thunderbird wine, provided to him by his cousin Rick Ortega, just before leaving the apartment. His girlfriend noted that Mr. Morales's demeanor resembled his appearance when under the influence of PCP. Patricia Santiago Flores (Felix) saw Mr. Morales smoke PCP on the day of the offense and reported that Mr. Morales's cousin wanted him to be high so he would help Ortega with his desire to scare the victim. After Mr. Morales returned to the apartment, the occupants noticed Mr. Morales's marked abnormal eye movements, unsteady gait, and lack of coordination, all of which are known to be among the outward manifestations of heavy PCP intoxication. (Exhibit 33 at 284-85; Exhibit 30, Declaration of Raquel Cardenas; Exhibit 28, Declaration of Patricia Felix.)

d. PCP is a psychotomimetic – a substance that induces psychosis. The hallmark of its cognitive and behavioral impacts is the ease with which users lose contact with reality. The psychomotor effects, strong dissociation of mind and body, and bizarre psychotic or violent behavior associated with PCP intoxication may leave users capable of physical activities involving gross and fine motor functions that are performed independent of and unmediated by the judgment and reasoning functions of the frontal lobes of the brain. (Exhibit 33 at 285.)

e. The facts of the crime and descriptions of Mr. Morales's behavior are consistent with the conclusion that he responded on a purely reactive level to Ortega's and Winchell's behavior and was unable to perceive, assess or calibrate the nature of his reaction. The effects of the PCP disconnected Mr. Morales from a physical awareness of the assault. (Exhibit 33 at 286.)

f. Mr. Morales's trial counsel knew that he was heavily intoxicated on the night of the crime, but did not investigate the severity and chronicity of Mr. Morales's drug abuse history and did not consult in a timely

fashion with appropriate experts. His omissions fell below a standard of care to be expected of reasonably competent counsel handling homicide and capital cases in the early 1980s. But for those omissions, Mr. Morales would have been found not guilty of first degree murder.

9. For reasons set forth above Mr. Morales is innocent of capital murder and first degree murder and this writ should be granted on that basis or, alternatively, Mr. Morales should be entitled to an evidentiary hearing.

III. PRAYER FOR RELIEF

WHEREFORE, petitioner respectfully requests that this Court:

1. Immediately stay his execution currently set for February 21, 2006, at 12:01 a.m.;

2. Take judicial notice of the contents of the certified record on appeal and all pleadings filed in *People v. Michael Morales*, Case No. S004552; *In re Michael A. Morales*, Case No. S030276, *In re Michael A. Morales*, Case No. S032386;

3. Order respondent to show cause why Mr. Morales is not entitled to the relief sought;

4. Grant Mr. Morales the right to seek sufficient funds and time to secure additional investigative and expert assistance as necessary to prove the allegations in this petition;

5. Order the San Joaquin County District Attorney and all agencies that assisted with or participated in the investigation and prosecution of Mr. Morales to disclose all files pertaining to the allegations in this petition and Mr. Morales's case that are currently being withheld, and grant Mr. Morales leave to conduct further discovery, including the right to take depositions, request admissions,

propound interrogatories, issue subpoenas for documents and other evidence, and afford Mr. Morales the means to preserve the testimony of witnesses;

6. Order an evidentiary hearing at which Mr. Morales will offer this and further proof in support of each and all of the claims;

7. Permit Mr. Morales a reasonable opportunity to supplement the evidentiary showing in support of the claims presented here and to supplement the petition to include claims which may become known as a result of further investigation and information which may hereafter come to light;

8. After full consideration of the issues raised in this petition, considered cumulatively and in light of the errors alleged on direct appeal, vacate the judgment and sentences imposed upon Mr. Morales in Ventura County Superior Court Case No. 17960;

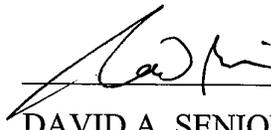
9. Grant Mr. Morales such further relief as is appropriate and just in the interests of justice.

Dated: February 10, 2006

Respectfully submitted,

DAVID A. SENIOR

KENNETH W. STARR



DAVID A. SENIOR

Counsel for Petitioner Michael A. Morales

VERIFICATION

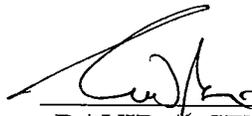
David A. Senior declares as follows:

I am an attorney admitted to practice law in the State of California. I represent petitioner Michael Angelo Morales herein, who is confined and restrained of his liberty at San Quentin Prison in San Quentin, California.

I am authorized to file this writ petition on Mr. Morales's behalf. I make this verification because Mr. Morales is incarcerated in a county different from that of my law office. In addition, many of the facts alleged are within my knowledge as much or more than Mr. Morales'.

I have read the petition and know the contents of the petition to be true.

Executed under penalty of perjury on this 10th day of February 2006 at San Francisco, California.



DAVID A. SENIOR

PROOF OF SERVICE

I, David A. Senior, declare that I am a citizen of the United States, employed in the City and County of Los Angeles, I am over the age of 18 years and not a party to this action or cause, my current business address is 1880 Century Park East, Suite 1450, Los Angeles, CA 90067.

On February 10, 2006, I served a true copy of the following document:

**PETITION FOR WRIT OF HABEAS CORPUS AND/OR WRIT OF
ERROR CORAM VOBIS AND REQUEST FOR IMMEDIATE STAY OF
EXECUTION AND REQUEST FOR IMMEDIATE STAY OF EXECUTION
SCHEDULED FOR FEBRUARY 21, 2006 AT 12:01 A.M.
AND EXHIBITS IN SUPPORT THEREOF**

on the following in said cause by personally serving true copies thereof in a sealed envelope at the following address:

Dane R. Gillette
Sr. Asst. Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.
Executed on February 10, 2006.



David A. Senior, Esq.