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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

JARED MORRISON §
(PETITIONER) §
§
V § CIVIL ACTION NO. MO-15-CV-069
§
§
WILLIAM STEPHENS §
(RESPONDANT) §

PETITIONER'S REPLY TO RESPONDANT'S ANSWER

Comes now, Petitioner, Jared Morrison (**"Morrison"**), and presents to this Honorable Court this; PETITIONER'S REPLY AND OBJECTIONS TO"RESPONDANT STEPHENS'S ANSWER WITH BRIEF IN SUPPORT" (**"AAG'S Answer"**). Morrison received the AAG's Answer, written by Gwendolyn Vindell (**"Miss Vindell"**), the Assistant Attorney General who answered for the Respondant, on January 26, 2016. Upon reading the AAG'S Answer, MOrrison realized most of the claims within are wholly unreasonable, without merit, and contrary to or are an unreasonable application of federal law as determined by the Supreme Court. Morrison now shows this fine court the reasons the AAG's Answer is unreasonable and should not be adopted:

I. OBJECTION TO MISS VINDELL'S RECONSTRUCTION OF GROUNDS 2,4,7,and 8

On pages 2-3 of the AAG's Answer, Miss Vindell listed Morrison's grounds for relief with her own interpretation and twist on some of the grounds. Morrison is a huge proponent of the First Amendment, and is by no means attempting to fetter Miss Vindell's freedom of speech. Morrison knows that in this Fine Country we do enjoy constitutionally protected rights such as; freedom of speech, right to due process and effective counsel at all criminal proceedings, and right to Writ of Habeas Corpus. However, Miss Vindell's reconstruction of some of Morrison's grounds are an abstract synopsis that sort of truncates the legal arguments and authority of his actual grounds.

For example, in Ground (2), Miss Vindell merely suggests that the "[c]ourts are not applying the appropriate culpable mental state in Texas Penal Code § 22.011, in violation of the separation of powers doctrine."

The gaping hole that statement leaves in Morrison's ground 2's separation of powers argument, is Miss Vindell's failure to show the crucial question upon which most of Morrison's other grounds depend: "What is the source of the Texas

courts' power to suspend Texas Penal Code Sections 2.01, 6.02, 8.02, and to negate the explicit intentionally or knowingly culpable mental state (**"CMS"**) in 22.011(a)(2)?"

That question, however a good one (if asked) cannot be answered because there is no answer. The Texas Courts have no such power because that authority belongs only to the Legislature, and by the courts encroaching on the Legislature's power and suspending and judicially making law, they have prevented Morrison from getting a fair trial, and in doing so, violated his rights to Due Process and equal protection of the laws. That unlawful exercise of power has also rendered 22.011(a)(2) unconstitutionally vague and overbroad.

"Judicially amending a validly enacted statute in this way is a flagrant breach of the separation of powers". (I borrow these words and logic from the brilliant Justice Antonine Scalia. See his dissent in Mcquiggen v. Perkins 133 S.Ct 1924 (2013). As I wrote my second draft to this section on 2/14/16 the terrible news of his passing came and I am greatly grieved. I would like to pay homage to this Great Justice: Justice Scalia, your honest and colorful opinions will be missed. Thank you for your 30 years of service on the Supreme Court. I may have not completely agreed with some of your opinions, but I can say the ones I have read that I do not agree with, are backed up with the law as it is written, therefore, your arguments were fair and reasonable. May the Lord Yahweh bless your soul, your family, and may your replacement Justice protect the Constitution and seek justice as you have done, by applying the law as it is written without construing or stretching it to its breaking point. You have made reading Supreme Court cases interesting, and I have no doubt, because of your sense for justice, had you ruled on my issues, you would have ruled favorably.

> Praise the Lord. Blessed are those who fear the Lord, who find great delight in his commands. Their children will be mighty in the land; the generation of the upright will be blessed. Wealth and riches are in their houses, and their righteousness endures forever. Even in darkness light dawns for the upright, for those who are gracious and compassionate and righteous. Good will come to those who are generous and lend freely, who conduct their affairs with justice. (Psalms 112: 1-5 NIV®) May these words in scripture apply to you.)

So to minimize the Texas Courts' violations by merely saying they "are not applying the appropriate culpable mental state" is an understatement!

The argument as Miss Vindell stated in Ground (4), is not Morrison's argument at all. Miss Vindell alleges that Morrison is saying, "Texas Penal Code 22.011 is unconstitutionally applied because it does not penalize persons who are within three years of the age of the victim". Morrison specifically stated in his brief in support of his 2254 (**"brief"**) that he cannot attack 22.011(e) facially as stated here. (See brief p.86).

Morrison's argument is specifically an as-applied to his situation claim, that says he was denied equal protection of the laws because his 18 year old cousin, who brought the minor to his house, told him she was 21, compelled the offense to happen, and did the same prohibited conduct to the same minor, but was never charged with the crime. The disparity of treatment given to Morrison (16 years prison) and his cousin (no charge), in the particular situation, does not wholly relate to the objectives of the statute, nor the defense the statute offers in 22.011(e)(2).

In Ground (7), Miss Vindell states, "Texas Penal Code § 22.011 is unconstitutionally vague and ambiguous in its Culpable Mental State." That is not Morrison's argument. To Morrison, the prescribed CMS is not vague or ambiguous. The rules of English grammer and syntax make it clear that the intentionally or knowingly mens rea requirement modifies every element of the crime, especially the only element that makes otherwise innocent conduct illegal; "of a child". Morrison's argument is that the Texas courts have interpreted 22.011 as being a strict liability offense, even though there is an explicit CMS prescribed in the heading of the statute, and no where does the statute dispense with any mental element, as required by law, to eliminate the mens rea as applying to "of a child". That makes 22.011 unconstitutionally vague because Morrison and others are not given proper notice that 22.011 is a strict liability offense. Plus, 22.011 has not established determinate guidelines for the police, judges, and juries, who have not, and might not discern it as being strict liability by 22.011's plain language, therefore, causing selective and arbitrary enforcement, as seen in several cases that Morrison points out in his brief at pages 115-127.

Miss Vindell botched ground (8) as well, saying only that the trial court abused its dicretion by refusing to continue his revocation hearing so that he could file a post-conviction writ of habeas corpus. Miss Vindell left out the main point of Morrison's argument, which is that the trial court denied Morrison the opportunity to file a writ of habeas corpus before he was convicted, suspending his right to writ of habeas corpus in the trial court pursuant to the United States Constitution. Miss Vindell also errs in saying Morrison filed a Post-conviction writ of habeas corpus, when in all actuality, he attempted to file a preconviction writ of habeas corpus under Texas Code of Criminal Procedure (T.C.C.P.) 11.07 section 2. (See RR3 p.6).

Most importantly, Miss Vindell left out any mention of Morrison's Actual Innocence/Miscarriage of Justice claim in Ground 14, which according to **Mcquiggin v. Perkins 133 S.Ct 1924 (2013)**, that ground is a gateway for the asserted

time limitation bar. More on that in a minute...

Morrison does not mean to seem like he is whining about sematics, it is only his hope that this fine Court correctly understands his grounds for relief, and reads them as they are presented by him, instead of Miss Vindell's compendium.

II. OBJECTION TO GENERAL DENIAL AND RERAISING EXHAUSTION OR OTHER PROCEDURAL BARS

As to the General Denial made by Miss Vindell on page 3 of the AAG's Answer, Morrison objects to it. Except for the trial court giving only a conclusory statement that grounds 2-7, 14 are without merit, the trial court, nor did the Texas Court of Criminal Appeals (**"CCA"**) oppose nor deny any of the allegations of facts stated within, in such a general way. Morrison asserts that in the interest of federalism, comity, and equity the respondant cannot, at this juncture, deny any allegations of facts that the state courts did not deny or oppose. Morrison cannot bring any new arguments or proof of facts without being procedurally barred, neither can the Attorney General's Office.

Morrison also objects to Miss Vindell claiming to be able to reserve the right to raise exhaustion or other procedural bars as stated on pages 4-5 of the AAG's Answer, should Morrison or the Court disagree with her claims. Miss Vindell, in her answer, has already conceded to any procedural bar or exhaustion, and to renege on that now when Morrison proves the time bar erroneous, or the Court rules in his favor would be unfair to Morrison and cause an unnecessary delay in these proceedings.

III. OBJECTIONS TO TIME BAR/EQUITABLE TOLLING

Miss Vindell's allegations in section I, pages 5-10 of the AAG's Answer, that say Morrison's claims (2, 3, 4, 5, 6, 7, and 10), relating to his original guilty plea proceeding are barred by the statute of limitations, are unreasonable and without merit. Morrison will now show seven different reasons why his seven grounds cannot be time barred on June 5, 2005 by 28 USC § 2244(d)(1):

1) Actual Innocence/Miscarriage of Justice/McQuiggin v Perkins 133 S.Ct 1924

Because of the plain language of the questions on the: PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY (**"2254 Petition"**), that Morrison filed, and of 28 USC § 2244's language, at the time he filed his 2254 petition he did not even fathom the possibility that he could be time barred at his deferred-adjudication probation order, because that order was not a sentence, nor was it a judgment of conviction, and he was not "held" or confined in jail or prison at

that time to even qualify for habeas relief in the Federal Courts as the 2254 petition requires. Therefore MOrrison did not include any mention of raising actual innocence for a time bar as he did with possible procedural default.

Morrison contends that because Miss Vindell raised the time bar issue in her answer, his Actual Innocence/Miscarriage of Justice claim he presented in ground 14, discussing procedural bars, also applys to the AEDPA's 1-year time limitation, as Morrison said on page 162 of his brief: "and this miscarriage of justice establishes actual innocence and also passes any procedural bar that may prevent him from raising the constitutional issues he presents".

Morrison presented Supreme Court case law precident that supported his Actual Innocence/Miscarriage of Justice position. See page 160 of his brief, where he cited to **Murray v. Carrier 477 U.S. 478 (1986)** and **Shlup v. Delo** 513 **U.S.** 298 **(1995)**, among others.

On May 28, 2013, the Supreme Court decided **Mcquiggin v. Perkins 133 S.Ct 1924 185 Led2d 1019 (2013)**, which used the Actual Innocence/Miscarriage of Justice exception to procedural bar, also as a gateway to pass the AEDPA's 1-year time limitation in situations like Morrison's, where if the time bar stood there would be a miscarriage of justice. In **Mcquggin v Perkins** the Supreme Court held:

> "That actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in Shlup and House [**House** v. **Bell 126 S.Ct 2064 (2006)**], or as in this case, the expiration of the statute of limitations." At **185Led2d 1027.**

Granted, the Supreme Court said that "tenable actual innocent gateway pleas are rare [,and] [a] petitioner does not meet the threshold requirement unless he persuades the district court that in light of the new evidence, no juror acting reasonably, would have voted to find him guilty beyond a reasonable doubt." Morrison will show that he meets this threshold requirement because of the new evidence that Morrison discovered in 2011, as explained in grounds 2, 5, 7, 12, 13, and 14, where he has shown his constitutional rights were violated. A look to those grounds are sufficient proof that because of the new evidence and violation of his constitutional rights, he is actually innocent of 22.011 as the plain language of that statute mandates, and no reasonable juror, following the plain language of 22.011 and the other laws like 2.01, 6.02, and 8.02, would have voted to find Morrison guilty beyond a reasonable doubt. If Morrison's grounds are not decided on the merits and this court time bars his claims as Miss Vindell wants, there will be a terrible miscarriage of justice, as there has been throughout Morrison's pretrial hearing, revocation of probation proceedings, and the state

appellate and collateral review process. Also thousands of others in this state will be subjected to the same constitutional violations that Morrison has had to endure.

Miss Vindell seems to want to continue this miscarriage of justice into the Federal arena, by raising the time bar defense, despite the fact that the seven issues she is hoping this court will time bar, if ruled on the merits would show that Morrison is imprisoned unconstitutionally, as proved in those seven grounds, along with the Actual Innocence/Miscarriage of Justice claim in ground 14, which Miss Vindell completely disregarded and did not answer. Since Miss Vindell did not deny ground 14, Morrison invokes Federal Rules of Civil Procedure Rule 8(b)(6) "Failing to Deny".

The question of due diligence came up in Mcquiggin v Perkins as a possible threshold requirement as stated in 2244(d)(1)(D), 2244(b)(2)(B), and 2254(e)(2)(A)(ii). The Supreme Court rejected that argument and held that the Sixth Circuit erred in Perkins'case to the extent that it completely eliminated timing as a factor relevant in evaluating the reliability of a petitioner's proof of innocence. At 185Led2d 1035. The Supreme Court went on to say, "focusing on the merits of a petitioner's actual innocence claim and taking account of delay in that context, rather than treating timeliness as a threshold inquiry, is tuned to the rationale underlying the miscarriage exception- i.e., ensuring that federal constitutional errors do not result in the incarceration of innocent persons" at 1034-1035.

Perkins delayed in filing his 2254 on his murder charges for six years after he found out about some new evidence that would be beneficial to his actual innocence claim, (three affidavits that could show he did not commit the murder). That delay was a concern regarding the validity of his actual innocence.

Morrison's case is distinguishable as far as the validity of his actual innocence is concerned regarding Morrison's delay in filing his 2254 from his deferred-adjudication probation hearing (**"deferred hearing" or "deferred probation"**) in 2004, to his first raising the issues in 2011. Morrison will admit that there was an almost seven year delay from the time of his May 6, 2004 involuntary guilty plea to the time he filed his first two pleadings for relief on March 1 and 5, 2011, in the district/trial court, which asserted the new evidence that if properly presented could have garnered relief with new trial or exoneration. See Exhibits "C", and "D" in Appendix "1". That delay should not affect the merits of Morrison's actual innocence claim because Morrison has proclaimed his innocence based on the new evidence found even before he pled guilty. One can tell by the trial transcripts that at Morrison's 2004 pretrial hearing he was very reluctant

in pleading guilty, and had it out with his attorney several times about his concern that he could not be held criminally responsible for unwittingly having consensual-in-fact sex with a minor, who came to his house, represented herself as an adult, looked like an adult, acted like an adult, and his cousin who broght her told him she was an adult. There is evidence of this conflict in the record in RR1 p9 where the following colloquy takes place:

THE COURT: All right. And you understand you will have to report as a sex offender?

THE DEFENDANT: Is there any way out of that Judge?

THE COURT: That is the Law.

MR. CANTACUZENE: He is not asking you do you like it. He is just asking you do you understand that.

THE DEFENDANT: I don't understand that because --

THE COURT: I Don't --

MR. CANTACUZENE: Have I explained it to you that that is the law?

THE DEFENDANT: Yes you have.

Morrison did not understand why the state would make him have to register as a sex offender for life, when he had consensual sex with someone who portrayed herself as an adult, and he reasonably believed she was 21 years. He addressed his concerns about that to the court, but it was cut off the record, as was the court's full response. Cantacuzene asked Morrison if he explained the law, which before the official hearing Cantacuzene, Tom MOrgan, and Lisa LaPlante (Cantcuzene's paralegal) told Morrison and his brother Jason MOrrison, that their mistake of her age would not matter because ignorance of the law is no defense. Morrison relied on that advice for seven years, and admits he was not diligent in finding the new evidence at that time because he thought that was the law. However Morrison, despite what his counselors told him did want to appeal the issues. See RR1 p.14:

THE COURT: Okay, I will sign this order placing you on community supervision for 9 years. You have, as part of the paperwork here, also signed a waiver of right to appeal. And that's part of the plea bargain. Do you understand you have given up your right to appeal and will not be allowed to appeal this judgment of the Court?

THE DEFENDANT: It was that lawyer that put it in as part of the plea agreement. Can that be changed?

MR. CANTACUZENE: No. We have nothing to appeal. No pretrial motions have been heard, and we have not had a jury trial. I told you not -- giving up our right, but you are not giving up anything of substance as well --

THE DEFENDANT: All Right.

Again Morrison, on record attempted to challenge his innocence, but his counsel tells him there is nothing to appeal. There is also more evidence of this conflict in the Affidavit of Rodion Cantacuzene, that was filed in the 11.07 proceedings.

At that time in 2004-2011 Morrison had absolutely no experiance in the law, and had to rely on the expertise of his counsel, who is suppose to know the law, and exercise diligence in researching defenses and possible constitutional violations for his client. Cantacuzene told Morrison several times that if he went to jury trial, that it would not matter that he did not know the girl was a minor, ignorance of the law is no defense, and the jury will have to go by the letter of the law and would find him guilty and sentence him to prison for 15-20 years. After cantacuzene, his paralegal Miss LaPlante, and Tom Morgan (Jason's counsel) told Morrison and his brother that they had no choice but to plead guilty, and take the probation, Morrison relied on that advice and expertise of three legal professionals for the next seven years, until he was locked up and read the statute he was in jail for. He then realized, contrary to what he has been told by his counsel in 2004 and by his probation officer and sex offender treatment counselors as well who also told him he would have gone to prison had he went to trial, that 22.011 had a plainly written mens rea requirement prescribed in the statute and the plain language clearly said that it **did matter** that he did not know the female in his case was a child, because 22.011 said "A person commits an offense if they intentionally or knowingly: Cause the penetration of the sexual organ of a child by any means". Since Morrison reasonably believed the female in his offense was an adult he did not fulfill all the elements of the statute as the plain language mandates, because he did not intentionally or knowingly have sex with a child. He realized from this new evidence that he was actually innocent of 22.011. After discovering that new evidence that was kept from him by counsel, Morrison was diligent, and has continued to be very diligent in pursuing his actual innocence claim, and the other constitutional issues and questions of law he is raising in this instant 2254 that are mostly generated from his newly discovered evidence discussed in grounds 2, 5, and 14. See Morrison's Motion for True Justice filed with the CCA on May 4, 2015 where it explains his diligence.

Therefore, not only should the **Mcquggin v. Perkins** Actual Innocence/Miscarriage of Justice exception allow him a gateway past the 1-year time limitation expiration, but Morrison's reliance on the advise of three legal professionals (who through the exercise of due diligence, could have raised the same claims in pretrial), and the Texas Courts' improper separation of powers violation and other constitutional

issues raised in the state 11.07 and federal 2254 (i.e. grounds 3-7, 14) there has been a showing of extraordinary circumstances to warrant equitable tolling as the doctrine is defined and supported by in the Supreme Court cases of **Holland v. Florida 177 LED2d 130 (2010)**, and **Magwood v. Patterson 177 LED2d 592 (2010)**.

2) Equitable Tolling/Magwood v. Patterson/Holland v. Florida

As explained above, and in Morrison's ground 12, where Morrison's 2004 counsel was ineffective by not properly investigating Morrison's case and failing to raise the claims Morrison now raises, (see pp.153-154, 156-158 of brief) Miss Vindell also wishes this court will time bar Morrison's ground 12 as saying it should have been raised within a year from the expiration of time to appeal the 2004 deferred probation order. This would have been impossible because as Morrison has shown, he did not find out about the constitutional issues until 2011, because he was misled by counsel until then. A look to Holland V. Florida and Magwood v. Patterson will show that Morrison should be entitled to equitable tolling.

On page 8-10 of the AAG's Answer, Miss Vindell Claims that Morrison is not entitled to Equitable tolling because:

A) "He did not allege any facts that could support a finding that equitable tolloing applies".

B) "It is Morrison's burden to show he is entitled to equitable tolling." (p.8 of AAG's Answer).

It is true that Morrison did not specifically allege any facts that could support a finding that "equitable tolling" should apply. As mentioned before, and will be argued in detail in reason 7) in this section infra, at the time Morrison filed his 2254, he was not even contemplating the notion that he could be time barred, by AEDPA, from when his deferred probation order was final, so Morrison did not even consider the need to raise equitable tolling. However, Morrison was a little worried about being procedurally barred for not objecting to his claims at trial or appealing his claims on direct appeal. Because of that worry, Morrison spent a good portion of the 2254 showing cause and actual prejudice to get past any procedural bar that may have risen. (See Statements of Facts pp.2-8, where Morrison explains the facts for how he was prevented from objecting and appealing his issues, and why he did not find out about the new evidence until 2011. See ground 1 where Morrison also explains how he was prevented from raising his issues by Rogers. Ground 8, where he was prevented by the trial

court from addressing his preconviction writ of habeas corpus issues; ground 10, where the trial court and counsel denied him the right to address the court to explain his habeas issues; ground 11, where appellate counsel was ineffective for not raising on appeal the trial court's err for overruling Morrison's continuance and not allowing him right to writ of habeas corpus; ground 12, where 2004 counsel was ineffective for not objecting to or preserving for further review, Morrison's 11.07 and 2254 claims; ground 13 same but for 2011 counsel;ground 14, Actual innocence/ miscarriage of justice claim. Also further evidence that shows Morrison was prevented from filing his issues prior to 2011, and that he was diligent in pursuing his rights since is shown in Appendix "1": See motion to disqualify Affidavit of David Rogers pp.89-102; Motion to object to Affidavit of Rodion Cantacuzene Jr. pp.129-131; the affidavits of David Rogers, Ian Cantacuzene, and Tom Morgan where Morrison's former counsel admit to strictly going off of the courts of appeals' 22.011 interpretation and not doing any further research or investigation, even though the interpretation was questionable.) A look through Exhibits "A"-"R" in Appendix "1" will also tell the story of Morrison's diligence and reasons why he was prevented from filing these seven claims before 2011. Morrison was prevented from filing the issues in Federal Court from 2011-May 2015 because of his direct appeal and 11.07 was pending. By showing all the things that inhibited Morrison from filing his seven claims before 2011, contrary to what Miss Vindell claims, Morrison has shown that he is entitled to equitable tolling that allows him to pass the time limitation and procedural bars. Because the above mentioned facts are supported by the record, and some are admitted to by the state courts regarding cause and actual prejudice in Morrison's inability to file his issues before 2011, those facts should entitle Morrison to equitable tolling.

Morrison also asserts and wishes this court to construe these, or some of these impediments as applying to 28 USC § 2244(d)(1)(B). Morrison will explore and give further evidence of why 2244(d)(1)(B) should apply also to allow him to pass the 1-year time limitation bar that Miss Vindell alleges, either later in this brief or in a supplement brief.

C) "Equitable tolling is available in 'rare and exceptional circumstances', it principly applies where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights." (p.8 AAG's Answer).

Morrison has shown with the reasons above and will state some further in this reply that will also show that he is entitled to equitable tolling. The exceptional circumstances in Morrison's case are manifested by the way he was prevented from

filing his claims before 2011 because he was misled by counsel and other legal professionals for seven years regarding the plain language of 22.011. Also counsel and apparantly almost the entire state of Texas has been misled by the Texas Courts of Appeals' unconstitutional interpretation of 22.011 and suspension of sections 2.01, 6.02, and 8.02 of the Texas Penal Code, as stated in grounds 2 and 5. As already shown Morrison had no reason not to believe what his attorney told him, and was therefore prevented from challenging his legal issues on appeal or any other subsequent state or federal collateral attack, until he found out about the new evidence that was withheldfrom him in 2011. Because Morrison has shown that he was misled by counsel and the Texas Courts about his cause of action for seven years, he was prevented in an extraordinary way from asserting his rights, and is therefore entitled to equitable tolling.

D) "To be entitled to equitable tolling,Morrison must show (1) that he has been pursuing his rights diligently, (2) that some extraordinary circumstance stood in his way and prevented timely filing." (p.9 AAG's Answer).

Morrison has shown and the record is replete with examples of Morrison pursuing his right to writ of habeas corpus since he found out about the constitutional issues he initially addressed in March 2011, which was before he was even convicted. That diligence is in fact what caused MOrrison to get a 16 year prison sentence as opposed to a seven year prison sentence. That extra nine years in prison for pursuing his rights in itself should surely entitle MOrrison to some kind of relief through equitable tolling or other relief as this Court sees necessary. Morrison has already shown what extraordinary circumstances stood in his way to prevent him from filing in 2004 to 2005. It would have been impossible for him to file these seven claims during that time.

It is Morrison's prayer that this Gracious Court objectively looks at his extraordinary situation and invokes the Doctrine of Equitable Tolling to allow him a gateway past the alleged time bar, so his issues will finally be addressed with more than the conclusory and unsupported statement that his grounds are without merit, as stated by the trial court.

E) Regarding Miss Vindell's remark on page 9 of the AAG's Answer about, "Morrison allow[ing] more than 10 years to lapse after his **conviction became final** before filing a state habeas application that would toll his federal limitation period".

That statement is erroneous and wholly untrue. Morrison's conviction did not become final until January 20, 2014, after the 11th Court of Appeals affirmed his conviction, his P.D.R. was refused, and his time for seeking writ of certiorari

had expired. Morrison was not convicted nor sentenced until April 28, 2011.

Miss Vindell is under the impression that Morrison's conviction became final on June 5, 2004. On pages 6-7 of the AAG's Answer Miss Vindell says the second, third, fourth, fifth, sixth, seventh, and tenth claims clearly attack his original plea of guilty that led to the order of deferred-adjudication entered on May 6, 2004, and those claims should be time barred in light of **Tharp v Thaler 628 F.3d 719 (5th Cir. 2010)**, and **Caldwell v. Dretke 429 F.3d 521 (5th Cir. 2005).** (A deferred-adjudication order and a judgement of conviction and sentence are two separate and distinct judgments for triggering the AEDPA limitation period.)

Miss Vindell uses the illogical consequenses of those holdings to say Morrison's limitation period expired on June 5, 2005. Morrison can not agree and will show his formidable reasons, but first he would like this Honorable Court to consider:

3) **Most of Morrison's grounds do not relate to or attack his original guilty plea**

4) **Morrison's claims affect First Amendment protected rights, so technically he can raise those issues facially and as-applied to his situation or others' situations who are not before the court at any time/Broadwick v. Oklahoma 93 S.Ct 2908 (1973)**

Morrison's grounds 3, 6, and 7 surely do not attack the original plea of guilty that imposed the deferred probation order. Grounds 2 and 5 arguably attack both, and because they are the foundation of the other constitutional claims they should also be addressed on their merits, in order to address their collateral consequenses without being time barred. These constitutional claims that Morrison raises, except for ground 4, are facial attacks that present a past, present, and future harm to Morrison and others' constitutional rights, and since the harm affects a First Amendment protected natural right, as shown in grounds 2, 3, 6, and 7, Morrison can raise these these grounds as facial attacks for others not before the court at any time. See **Broadwick v Oklahoma 93 S.Ct 2908, 2916 (1973),** and **Bigelow v. Virginia 421 U.S. 809 (1975),** and **Dombrowski v Pfister 380 U.S. 479 (1965).** Also see page 105 of brief, where Morrison invoked this right.

Ground Three: As long as 22.011 allows adults to marry and engage in sexual conduct with 14 to 16 year age group, but imprisons people who engage in the exact same conduct with the same age group, but choose not to get married, there will be an unconstitutional disparity of treatment to the class of people who wish to remain unmarried. Because that disparity of treatment is subject to strict scrutiny and is wholly unrelated to the objectives of the statute, and there is no

compelling governmental interest that justifies the disparity between the married and unmarried. This ground has nothing to do with Morrison's original guilty plea, and should be ruled on the merits.

Grounds 2, 6: Because 22.011 has been incorrectly and unconstitutionally interpreted to suspend the CMS and it has been deemed strict liability, as to the defendant's mens rea of the minority of the minor from 14 to 16 years, Morrison and others' First Amendment protected right to copulate and freedom of intimate association with the 17 to 25 year age group has been and will continue to be chilled because of the fear they could be duped into having a sexual encounter with a precocious minor who lied about her age. 22.011 being strict liability makes the statute unconstitutionally overbroad. If 22.011 was not considered strict liability it would not be any less effective in protecting the 14 to 16 year age group. These grounds in this context have nothing to do with Morriosn's original guilty plea, and if ruled on their merits it would resolve the future harm to Morrison and others not before the court that is discussed in these two grounds.

Grounds 2, 5, 7: Because the Texas courts have violated the Separation of Powers Doctrine and violated the equal protection of law rights of offenders of 22.011, by suspending and negating the laws (i.e. 2.01, 6.02, and 8.02) which are guaranteed to protect all others who commit any other felony, despite the fact that there is a clear mens rea requirement prescribed in the statute, with no indication of dispensing with any mental element, they have renedered 22.011 unconstitutionally vague, by not giving fair notice of the strict liability interpretation. That vagueness will continue to jeopardize people into making the same mistake that Morrison made. It also causes selective enforcement of 22.011.

The lack of fair notice is also what caused Morriosn to reject the seven year plea and ultimately be sentenced to 16 years. Grounds 2, 5, and 7 should relate to the revocation hearing of 2011 under the above context also, and be ruled on their merits.

Ground 12 (AAG's claim 10): Morrison has already shown the reasons his ground 12 Ineffective assistance of counsel (**"IAC"**) claim should be ruled on its merits. Morrison also asserts that the same logic the Supreme Court had in **Trevino v Thaler 133 S.Ct 1911 (2013)** should be applied to this ground since it was impossible for Morrison toraise this ground in 2004-2005. Also when Morrison first attempted to raise this ground in 2011 he was deprived of effective counsel to raise it as explained in grounds 8, and 13. Morrison acknowledges that **Trevino** was a capital death penalty case and therefore it may be distinguishable, but he raises it as support so he can preserve the issue if needed later.

Ground 4: Morrison realizes this ground is only an as-applied to his situation claim, and relates to only his guilty plea, but Morrison humbly asks this court to also rule on its merits because of the other reasons stated in this reply.

5) **The plain language of 2244(d)(1) does not allow for the 1-year time limitation to start at a deferred probation order because defendants who take deferred probation, in lieu of going to trial, waive there right to appeal and have no way of seeking direct review to finalize the deferred-adjudication order at that time to trigger the 1-year limitation period as required in 2244(d)(1)(A). The plain language of 2244(d)(2) would be rendered void because a person on deferred probation could not collaterally attack his defered-adjudication order until he was sentenced and convicted. These state created impediments can be constued as an exception in 2244(d)(1)(B).**

Regarding the Fifth Circuit's Holdings in **Tharp v. Thaler 628 F.3d 719** and **Caldwell v. Dretke429 F.3d 521,** Morrison would like to argue that the Supreme Court's holding in **Burton v. Stewart 127 S.Ct 793, 166 LED2d628 (2007)** does define the term final judgment for purposes of AEDPA as being in opposition to Tharp and Caldwell, and Burton supports Morrison's position that his deferred probation order cannot be considered a final judgment for purposes of the AEDPA 1-year time limitation period. The plain language of 2244(d)(1),(2) also show that the Fifth Circuit erred in its decision in Tharp, and Caldwell. In Burton v. Stewart the Supreme Court defined final judgment at 166 LED2d 636-637:

> "Final judgment in a criminal case **means sentence**, the **sentence is the judgment**:(Inside citation omitted). Accordingly Burton's limitation period did not begin until **both his conviction and sentence became final by the conclusion of direct review or the expiration of time for seeking such review.**" (Emphasis added).

This definition was discussed in Tharp and the Fifth Circuit held: "That under the discrete circumstances of this case, our analysis in Caldwell is not affected by Burton, so we affirm the District Court's dismissal of Tharp's deferred-adjudication claims as untimely". **Tharp** at **721.**

The Court in Tharp also held that "The plain language of AEDPA, as well as its underlying purpose requires that we treat a deferred-adjudication order as a 'judgment' under this provision as well as under 28 USC § 2254(a) which confers habeas jurisdiction on Federal Courts for state **prisoners**, only if they are 'in custody' pursuant to the judgment of a state court." (Caldwell at 527, Tharp at 722).

To Morrison that basically means that a Texas **prisoner** who was placed on deferred probation by a court order and wants to challenge issues relating to that order, has one year after the deferred probation order is final, by direct appeal or expiration of time to seek direct appeal, to raise those issues in a Federal writ of habeas corpus. If the state **prisoner** does not raise those issues within a year after the judgment became final "by the conclusion of direct review or the expiration of time for seeking such review", as pursuant to the language of 2244(d), then he is time barred. That would be impossible so Morrison cannot agree. The illogical consequenses of that holding confuses this reader to the point of going cross-eyed. This confusion starts with the Tharp holding acknowledging that 2254(a) "confers habeas jurisdiction on Federal Courts for **state prisoners** only if they are 'in custody' pursuant to a judgment of a state court." A would be petitioner of 2254, who is on deferred probation is not a state prisoner, so according to that language in Tharp he can not be "in custody" by meaning of 2254(a) or the 2254 petion for writ of habeas corpus (which will be explained further in reason 7)), therefore, that probationer could not even do a 2254 petition even if he wanted to, while being on deferred probation without a conviction, sentence, or in prison, still the Fifth Circuit held in Tharp that the time limitation starts at the deferred probation order.

The confusion in Tharp continues because in normal deferred probation plea bargains, it is common, as it was with Morrison and Tharp, that the defendant is required to waive their direct appeal rights in order to accept the deferred probation. Consequently, the AAG's Answer on page 7 stating that Morrison had 30 days after his deferred-adjudication order for taking a direct appeal is a misnomer. Comparably, the Fifth Circuit's statement in Tharp saying, "if such a defendant wishes to raise issues related to his guilty pleaor deferred-adjudication, he must do so on **direct appeal** from the deferred adjudication order immediately after it is imposed; he may not wait until after he violates the terms of his probation and he is held guilty." See Tharp at 722, quoting **Manual v. State 994 S.W.2d 658 (1999).** Because both Tharp and Morrison (and probably the rest of deferred probation defendants in Texas) gave up there right to direct appeal before being place on deferred probation, that statement is also in err and is the antithesis to the purpose of 2244(d)(1). Even if a defendant (in the extreamly rare situation) did find reason to appeal his deferred probation order immediately after the order was imposed, since he would have waived his appeal, that order could never be final "by the conclusion of direct review or expiration of the time for seeking such review" because he could not legally appeal his deferred probation order.

In the plain language of 2244(d)(1), it demands that a petitioner has one year to file a federal petition for writ of habeas corpus "**starting from the date on which the judgment became final by the conclusion of direct review or the expiration of time for seeking such review.**" Because of this plain language, a petitioner who at their deferred probation order, can not seek direct review, does not fit into the purview of this statute until he has had the opportunity to seek direct review, which can only occur after his deferred probation is revoked, and he is convicted for the charge, then sentenced accordingly. Any other reading of the plain language of 2244(d)(1), as stated in Tharp, Caldwell, or the AAG's Answer is contrary to the plain language of 2244(d)(1) that Congress enacted and would render the "become final by the conclusion of direct review or expiration of time for seeking such review" language void when a petitioner has had no legal opportunity to seek direct review. This same logic would apply to 2244(d)(2), since a deferred probationer who had no conviction could not do a collateral attack to toll the AEDPA's one-year limitation period until he had his probation revoked and he was convicted and sentenced.

The Tharp and Caldwell holdings also do a huge injustice to the entire Deferred-adjudication probation scheme. Those holdings essentially prevent people whom are normally first time breakers of the law, and normally do not know much about their rights or the law, from ever raising constitutional issues or procedural errors of their arrest and confinement, in the federal courts, after a year of being on deferred probation, when most people while free from imprisonment and only on probation, busy with their kids and working, would not seek until they lost all aspects of their liberty. The reasonings behind AEDPA's one year limitation period were suppose to be originally to streamline death penalty cases so those cases did not continue to bog the courts down with writ after writ. It was also intended to fight the spread of terrorism both at home and abroad, hence the title; Antiterrorism and Effective Death Penalty Act of 1996. Congress surely did not enact it to prevent a first time breaker of the law who is not a terrorist or sentenced to death from exercising their right to writ of habeas corpus in the Federal Courts for the first time after they are convicted and sentenced to prison. Morrison asserts that Miss Vindell, and the holdings in Tharp and Caldwell that say he is time barred for raising his issues is contrary to the purpose of AEDPA.

6) **Tharp, Caldwell, and Miss Vindell have misapprehended the definition of final judgment as stated in Burton v. Stewart.**

The Fifth Circuit in Tharp goes on to admit that if the defendant does not appeal at the time of Deferred probation order (which is impossible. See RR.1 p.14)

and thereafter violates a condition of his community supervision, however, the court holds a hearing to determine whether it should then proceed to impose a judgment of guilt. If the trial court holds such a hearing and convicts the defendant, it also sentences him. Under these circumstances 'all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and defendant's appeal **continue as if the adjudication of guilt had not been deferred.**" See Texas C.C.P. § 42.12(5)(b).

This statement and law lends credence to the fact that these proceedings are intended to be one **continuous judgment**, Not"two entirely separate and distinct judgments, one a deferred-adjudication order and the other a judgment of conviction and sentence", as the Fifth Circuit says in Tharp at 724.

Since the deferred probation order (which is not a judgment at all according to Burton), is a pending order awaiting the defendant to either successfully complete his probation as ordered by the court (where he will not be convicted or sentenced), or he does something to violate that order, in which the court has a hearing on the state's motion to revoke probation (where upon adjudication of his guilt he is then convicted and sentenced to prison). Since the defendant's proceedings and appeal continue as if the adjudication of guilt had not been deferred, that language clearly says that the proceedings and direct appeal process start as if the adjudication of guilt was never deferred to begin with. The reliability of that statement is supported by the definition of final judgment as stated earlier, quoted from Burton v. Stewart. It is also reinforced by Morrison's trial transcripts at RR.1 p.13: where the court said, "I will also find that in the better interest of justice and defendant, that you -- the adjudication of guilt be deferred in this case and you be **placed on** community supervision for a period of nine years." The Court went on to tellMorrison about the pros and cons of the deferred probation order, by stating it is a good deal if he makes it because he will end up without a conviction, but its a lousy deal if he doesn't make itand he is brought back in front of the court for violating the rules. The trial Judge told him if that happens, the court can **sentence** him to 20 years in the institutional division.

Almost seven years later, MOrrison went back in front of the court to face a probation violation. The court found that he violated his probation, adjudicated his guilt for the 22.011 violation and then **sentenced** Morriosn to 16 years prison. See RR.3 pp.63-66.

According to the Supreme Court in Burton v. Stewart, they said that a final judgment for purposes of AEDPA means sentence, the sentence is the Judgment, and the limitation period does not begin until both a conviction and sentence became

final by the conclusion of direct review or expiration of time for seeking such review. At Morrison's deferred-adjudication hearing in 2004, he was not sentenced to nine years of probation. He was placed on community supervision/probation. There was no sentence because there was no conviction. It was not until April 28, 2011 that the court convicted Morrison of the 22.011 charge and sentenced him to prison. Since the order placing MOrrison on deferred probation was not a sentence, as determined by the Supreme Court in BUrton v. Stewart, that order was not a final judgment by meaning of the AEDPA one-year limitation period set out in 2244(d). The final judgment was where both of Morrison's conviction and sentence became final by the conclusion of direct review or expiration of time for seeking such review. That date was January 20, 2014, 90 days after Morrison's P.D.R. was refused, to allow time to seek writ of certioria so to complete direct review. That date is what triggered the one-year limitation period as according to 2244(d) and the Supreme Court. Morrison file his state collateral attack with the trial court on December 30, 2014. That tolled the limitation period. See 2244(d)(2). His 11.07 was denied on April 29, 2015. Morrison timely filed his 2254 on May 19, 2015. When Morrison did his filings he did not account for the mailbox rule because he did not know if it still applied since he sent his 11.07 and 2254 to his mother to copy thenfile, instead of directly to the court. He chose to error on the side of caution. Since Morrison filed his 2254 with time to spare as counted with or without the mailbox rule he cannot be time barred for any of his claims for the reasons stated above.

7) **Morrison was not "in custody" pursuant to 2254(a) when his deferred probation was ordered in 2004, therefore, that order could not be the final judgment for purposes of triggering the AEDPA 1-year limitation period**

In **Maleng v. Cook 109 S.Ct 1923 (1989)** the Supreme Court defined "in custody" for purposes of 2254(a) to mean, "that the habeas petitoner must be 'in custody' under the **conviction or sentence** under attack at the time his petition is filed." All the cases Maleng refers to; **Carafas v Lavellee 391 U.S.234 (1968), Jones v. Cunningham 371 U.S. 236 (1963)** discuss petitioners who are not actually in prison because of expiration of sentence or are on parole. But the common theme in those cases werethat the petitioner was convicted and sentenced. That same definition also applies to the three examples in **Caldwell at 429 F.3d 527 n.15**, that the Fifth Circuit cited to justify "in custody" as applying to people who are not in prison but are sentenced to probation, 500 hours of community service, or sentence had been stayed, to confer federal habeas jurisdiction. Morrison's case is

distinguishable because he was not "in custody" as required by 2254(a) to invoke federal jurisdiction in 2004, as Miss Vindell claims, because Morrison was not convicted or sentenced at that time, therefore, he could not have filed for federal habeas relief under 2254 even if he had tried.

The Supreme Court's definition of "in custody" as requiring a conviction and sentence is also a common component in the plain language of the questioning and contact information on the "PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY" (**"2254 petition"**). The questions in the 2254 petition also suggest that the petitioner must be "held", or "confined" in a jail or prison before they can file the 2254 petition.

Morrison does not know if it was the Congress or the courts that drafted the 2254 petition, but the disclaimer at the top of the first page of the 2254 petition says that the 2254 petition is adopted by all Federal Courts in Texas. Morrison realizes that the Fifth Circuit resides in Lousiana, and he assumes, but not for certain, that the 2254 petitions in Lousiana read the same as the 2254 petitions in Texas, and also have the consistent theme that says a petitioner who files a 2254 petition must be convicted, sentenced, and confined in prison or jail, and that those convictions and sentences must be final. For example:

The first information the petitioner must give on page 1 of the 2254 petition is his current contact information, i.e. "current place of **confinement**", **"Prisoner** I.D. number". Then the name of respondant (**TDCJ DIRECTOR, Warden, Jailor**, or authorized person **having custody** of petitioner). No where is there a place on the 2254 petition for someone who is not in prison or jail to fill out their contact information.

It is being argued by Miss Vindell that Morrison should have filed his grounds 2-7, 12 in a 2254 petition before the expiration of the 1-year time limitation that expired on JUne 5, 2005. According to the plain language of the 2254 petition that would have been impossible because Morrison was not convicted, sentenced, or held in jail or prison. The 2254 petition further states:

Instruction #4(2): This instruction discusses Informa Pauperis protocol as to being confined in TDCJ-CID or in another institution where they have officers that can certify the amount of money on deposit at that institution. Surely the Midland Probation Office is not that kind of institution. They do not have trust fund accounts for probationers.

Instruction #7) p.2: "The venue list in your **unit law library** lists all the Federal Courts in Texas and the addresses for the Clerk's offices. The proper court will be the Federal Court in the division and district in which you were

convicted... or where you are now **in custody** (for example **the Huntsville Units** are in the Southern District of Texas Houston Division). Whoever wrote this question clearly has meant for this question to refer to only people who are convicted and in custody in a prison unit; not in custody from a probation order where the conviction is deferred.

On page 2 the petitioner must check what they are challenging. There are only four possible boxes to check. The first box combines "A Judgment of Conviction", "probation", and "Deferred-adjudication probation". This is the only place in the petition that mentions a deferred-adjudication probation or regular probation. If the Congress or Courts intended that Morrison's final judgment, for purposes of the AEDPA 1-year limitation period started at his deferred probation order, they would have listed the"deferred-adjudication probation" option with a separate box to check as they did with the other three available boxes, and also gave specific questions to answer for challenging a deferred probation order where the petitioner has not been convicted or sentenced. Since the "Deferred-adjudication probation" is listed in the same box as "Judgment of Conviction or Sentence" and the questions asked are all the same i.e. pertaining to conviction or sentence or confinement, that could only mean that Congress and the Courts meant for the "Deferred-adjudication probation" to be challenged after the conviction for that order became final, as the following questions clearly mandate.

Still on page 2 of the 2254 petition, the note under "All Petitioners must answer questions 1-4", says that; "You must give information about **the conviction for the sentence you are presently serving"**. That sentence is underscored on the form to show emphasis, and must only mean that in order for someone to fill out the 2254 petition a person must be presently convicted and serving a sentence. Morrison was not convicted or sentenced in 2004-2005 when Miss Vindell and the Fifth Circuit in **Tharp** and **Caldwell** supra, say he should have filed his 2254 petition. Therefore, according to the underlined statement on the 2254 petition, Morrison could not have filed this form until he was presently serving a sentence for the conviction of his 22.011 violation. That conviction and sentence occured on April 28, 2011 not May 6, 2004.

Questions 1, 2, 3, 4, and 8 on pages 2-3 all discuss the judgment that is under attack as being a conviction or sentence. There is no mention of a deferred probation order where a petitioner is not serving a sentence for a conviction.

Because there is separate questions that specifically relate to parole revocations and prison disciplinary proceedings in questions 13-19, Morrison contends that had Congress or the Courts wanted A deferred-adjudication probation order and conviction and sentence to be two entirely distinct and separate judgments for purposes of

being a final judgment triggering the AEDPA's 1-year time limitation period, as the Fifth Circuit has held in Tharp and Caldwell, they would have included separate and specific questions for petitoners who were placed on deferred probation and not yet convicted or sentenced, so to allow that petitioner to attack his constitutional issues while not having a conviction, nor presently serving a sentence of confinement as required in the 2254 petition.

Question 20 on page 6 again shows the 2254 petition is reserved for prisoners and not someone who is on deferred probation. It states, "For this petition, state every ground on which you claim that you are being **held** in violation of the constitution..."

Being "held" has the connotation of someone being prevent from leaving a certain place. Morrison was not being "held" in violation of the constitution until he was imprisoned unconstitutionally by the State of Texas and not allowed to leave the state's restraint in 2011. Therefore, Morrison timely filed his 2254 petition which contain the issues, grounds 1-14 which all relate to his 2011 to present unconstitutional imprisonment. Morrison has proven in those grounds that he is being "held" against his will in violation of the Constitution, laws, or treaties of the United States, and to not allow him to present the constitutional violations that imprisons him to the Federal Courts by time barring him for before he was even in prison would be contrary to the purpose of AEDPA and the writ of habeas corpus'long history. See **Boumediene v. Bush 171 LED2d 41, 82 (2008)** where the Supreme Court said, "Congress has taken [care] throughout our Nation's history to preserve the writ and its function. Indeed, most of the major legislative enactments pertaining to habeas corpus have acted not to contract the writ's protection but to expand it or to hasten resolution of **prisoner's** claims." They went on to mention that Title 1 of AEDPA is an exception to that above quote, but it "contains certain gatekeeping provisions that restrict a **prisoner's** ability to bring **new and repetitive claims** in **'second or succesive'** habeas corpus actions." Morrison's claims are not in a 'second or succesive' petition, this is his first opportunity to present his claims in the Federal Courts. Because of this he respectfully and humbly asks this Honorable Court to decide his grounds that Miss Vindell wishes to time bar on their merits.

That question 20 and the remaining questions are specifically and explicitly addressed to **all petitioners.** See the notification on page 6, informing the petitioner that "All petitioners must answer the remaining questions." If that is a prerequisite for the remaining questions, then a petitioner who is on deferred probation could not state any ground which they claim they are being "held" in

violation of the Constitution because a person on probation is free to leave the probation office, and then go live his life without being "held" and unable to leave. The history of the writ of habeas corpus has always been a protecton for people whose detention or imprisonment is illegal. The Supreme Court supports that long history in **Boumediene** supra as Morriosn has shown in the bolded emphasis of prisoner's above.

Questions 22 on page 8, and 26 on page 9, also show strong support for Morrison's argument. These questions specifically address the 2244 AEDPA. Question 22 adresses second or successive petions as stated in 2244(b). It asks, "Have you previously filed a Federal habeas petition attacking the same **conviction**, **parole revocation**, or **disciplinary proceeding** that you are attacking in this petition?" The question only mentions **conviction**, parole revocation, or prison disciplinary proceedings. There is no mention of a deferred-adjudication probation order being challenged, so that must mean that relief through a 2254 is only possible when a "conviction", is final for purposes of AEDPA successive writs, or a person is challenging a "parole revocation", or prison "disciplinary proceeding". All three options deal with a petitioner who has a conviction, not when a person is ordered to be on deferred probation where there is not yet a conviction.

Question 26, which relates specifically to 2244(d)(1)'s 1-year time limitation, and to the issue related to this exact argument, is also very precise in addressing what type of judgment is subject to 2244(d). It states, "If your **judgment of conviction**, parole revocation, or disciplinary proceeding became final over one year ago, you must explain why the one year statute of limitations contained in 28 USC § 2244(d) does not bar your petition."

Morrison answered that question with a N/A (non-applicable to him), because his "judgment of conviction" did not become final over a year before he filed his 2254 petition. Had the Congress or Courts intended the AEDPA's successive petition or one-year time limitation to start counting from a petitioner's deferred-adjudication probation order, they would have specifically mentioned the finality of the deferred probation order in questions 22 and 26 as they did the other itemized judgments, and allowed the petitioner to attack the deferred probation order without a "judgment of conviction". Since Morrison was not convicted at his deferred probation hearing in 2004, that order was not a judgment of conviction, therefore, it could not have been a final judgment as asked in question 26, nor could his 2004 deferred probation order and his 2011 conviction and sentence be considered; "two entirely separate and distinct judgments- one a deferred adjudication order and the other a judgment of conviction and sentence,

that deal with two separate and distinct limitation periods under AEDPA.", as stated in **Tharp** at **628 F.3d 724.** Morrison contends that because he was not convicted, sentenced, or "in custody" as the 2254 petition's questions ask, and defined for purposes of 2254(a), he could not have invoked federal jurisdiction for habeas relief via 2254 petition in 2004 without having been convicted, sentenced, or "held in custody". Therefore, his deferred probation order could not have been final judgment for triggering the Aedpa's 1-year limitation period.

The Supreme Court's decisions in **Burton v. Stewart** and **Maleng v. Cook** as discussed earlier also support this fact about what a judgment is when it relates to the AEDPA, 2244(d), and 2254(a). Morrison has proven that his deferred probation order cannot be considered a final judgment for triggering the 1-year time limitation. Any decision that would say otherwise would render the entire 2254 petition void for vaguness, because according to the plain language of the 2254 petiton, as explained above, it only applies to petitioners who have a conviction, sentence, and are being "held" in jail or prison, or petitioners who are challenging a parole revocation hearing, or prison disciplinary proceeding. A person on deferred probation does not have a conviction, sentence, and is not being held in jail or prison, so to time bar someone who does not even qualify to file a 2254 writ of habeas corpus petition, as is mandated in the 2254 petion's plain language, would be an impediment for much deserved relief to a prisoner who did timely file his 2254 petition to complain about his unconstitutional imprisonment, after his judgment of conviction became final, as in Morriosn's situation. Morrison asserts that that impediment is also an unconstitutitional state created impediment for purposes of 2244(d)(1)(B).

IV. CONCLUSION

By proving how several constitutional violations caused Morrison to be convicted of a crime in which he is actually innocent, Morrison has shown seven different reasons to this Fine Court why grounds 2, 3, 4, 5, 6, 7, and 12 should not be time barred as alleged in the AAG's Answer:

1) Actual Innocence/Miscarriage of Justice/**Mcquiggin v. Perkins,**
2) Equitable Toling/**Holland v. Florida/Magwood v. Paterson,**
3) Grounds 2, 3, 5, 6, 7, and 12 do not relate to 2004 deferred probation order,
4) Morrison's claims affect First Amendment protected rights, so they can be raised facially for people not before the court/**Broadwick v. Oklahoma,**
5) Morrison could not appeal his deferred probation order, therefore, his judgment could not have become final for purposes of 2244(d)(1) since he could not seek direct review until after his revocation hearing,

6) Morrison was not convicted or sentenced at his 2004 deferred probation order, therefore, his conviction was not a final judgment as defined in **Burton v Stewart,**
7) The common theme in the 2254 petition that a person must be convicted, sentenced, and held in custody as in a jail or prison, raises questions about the legitimacy of **Caldwell v Dretke**, **Tharp v. Thaler**, and the AAG's Answer that claims Morrison's one-year time limitation was triggered at his deferred probation order.

The fact of the matter is that Morrison has proven in grounds 2-7, 12, 13, and 14 that he is unconstitutionally imprisoned because the Texas courts have ignored the constructs of the true language of the Legislature and suspended their duly enacted laws; 2.01, 6.02, 8.02, and negated the mens rea requirement in 22.011. 22.011 is unconstitutional on its face and as-applied to Morrison. Morrison suspects Miss Videll knows this, and because of the insurmountable arguments that he raised in these grounds, the only rebuttal Miss Vindell can bring,is to try to vanquish Morrison's formidable grounds, with a magical sword that she fashioned together in the shape of 28 USC § 2244(d)(1). Morrison admits that it was a gallant effort, and now he humbly asks this Honorable and Prudent Court to invoke Lady Justicia's unrelenting and powerful sword, and use it with the protection of at least one of the seven 2241(d) shields that Morrison has provided above, to strike down the erroneous time bar that Miss Vindell alleges. And then address all of his stated grounds on their merits.

The trial court, the State's District Attorney, the Court of Criminal Appeals, and now the Attorney General's Office have all had the opportunity to address Morrison's seminal constitutional questions of law, and except for the trial court's unsupported and conclusory claims that only say the claims are without merit, nothing has been said to address these consequential constitutional issues that not only affect Morrison, but every person over 20 years of age in this Great State. Because of the importance of the constitutional issues and questions of law presented by Morrison in this 2254, it is Morrison's prayer that this Honorable Court does not time bar these issues, and it objectively addresses the claims on their merits. If for some reason this Federal Court cannot strike down the alleged time bar, because Morrison has shown that his constitutional rights have been violated in grounds 1-14, those violations have caused him to be in prison, and he has shown that the seven reasons he gave to bypass the time bar are debatable among jurists of reason, he asks this court to grant permission for a Cetificate of Appealability.

Even if the above seven reasons do not boost Morrison over the alleged time

bar, he will now show why the several unconstitutional state actions that impeded his ability to discover and file those claims, which could prove his innocence, could not have been filed until Morrison filed them on December 19, 2014 in his state 11.07 collateral attack. This will show why Morrison should be entitled to the protection of the law stated in 28 U.S.C. § 2244(d)(1)(B). 2244(d)(1)(B) should in fact make the limitation period run from the removal of the impediments that Morrison will explain in further detail. After all of the impediments have been removed, the AEDPA time limitation period was to be triggered on January 20, 2014, and expired on January 20, 2015 minus tolling for his 11.07.

V. STATE CREATED IMPEDIMENTS 2244(d)(1)(B)

It should first be mentioned that the Supreme Court has been reluctant to interpret AEDPA to deny a habeas corpus petitioner at least one meaningful opportunity for post-conviction review in the UNited States District Court, the U.S. Court of Appeals, or the Supreme Court. Justice Breyer observed that the decision in **Stewart v Martinez-Villareal, 523 U.S. 637 (1998)** and **Slack v. McDaniel 529 U.S. 473 (2000)** exemplify the Supreme Court's tendency to "assume that Congress did not want to deprive state prisoners of their first habeas corpus review." **Duncan v. Walker 533 U.S. 167, 192 (2001) (Breyer J. Dissenting).** That same logic should apply to Morrison in this instance, as for the reasons explained in **Slack At 487**, "This result would be contrary to our admonition that the complete exhaustion rule is not to 'trap the unwary pro se prisoner'." (Quoting **Rose v. Lundy 455 U.S. at** 520). More recently the Supreme Court said in **House v. Bell 126 S.Ct 2064, 2078 (2006),** to reiterate its previous admonition from **Lonchar v. Thomas 116 S.Ct 1293, 1299 (1996):** "Dismissal of a first federal habeas petition is a particularily serious matter, for the dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty."

The Fifth Circuit is also on board with this less restrictive approach; "We must be cautious not to apply the statute of limitations too harshly, and we are mindful that dismissing a first... habeas petition is a 'particularly serious matter'", **U.S. v. Patterson 211 F.3d 927, 931-32 (5th Cir. 2000).**

A look to the public notice "STATEMENT BY THE PRESIDENT", given by President Bill Clinton on April 24, 1996, it is obvious that President Clinton did not intend for the **Antiterrorism and Effective Death Penalty Act** as restricting the Federal Courts' role in reviewing meaninful habeas corpus petitions, rather he expressed the importance of "[p]reserving the Federal Courts' authority to hear evidence and decide questions of law."

Randy Hertz and James Liebman noted: "Upon signing the [AEDPA] bill, Bill Clinton issued a statement declaring that AEDPA was intended to 'stremline Federal appeals for convicted criminals sentenced to the death penalty' but not to make substantive changes in the standards for granting the writ. He stated he would not have'signed the bill' if he thought the Federal courts would'interpret [it] in a manner that would undercut meaninful Federal habeas review.' He called upon the'Federal Courts... [to] interpret these provisions to preserve independant review of Federal legal claims and the bedrock constitutional principle of an independant Judiciary'". (Quoting Chapter 3, Federal Habeas Corpus Procedures and Practice 7th ed. by Randy Hertz and James Liebman.) (See Exhibit "A" of this Reply; "STATEMENT BY THE PRESIDENT").

The Supreme Court has also explained that the procedural default doctrine is designed, on one hand, to discourage petitioners and their lawyers from "sand-bagging". The courts frown on sandbagging, but on the other hand, the doctrine is designed to ensure that the State courts actually gave petitioners a fair "procedural opportunity" to present the claim (see **Reed v. Ross 468 U.S. at 14**). In Morrisons case the procedural defaults were not the result of a stratigic, tactical, or "sandbagging" choice, but instead the defaults (procedural or expiration of time limit to file) were attributable to external factors beyond his control, so the AEDPA one-year time limitation procedural default or any other procedural defaults should be excused. Morrison will do a quick summary of the background of events to show what caused the impediments that prevented him from filing.

1) Background of Events

ON May 6, 2004 Morrison and his brother Jason pleaded guilty to Texas Penal Code 22.011 from charges that arose from an incident that occured in JUne 2003 where the Morrisons engaged in consensual-in-fact sexual conduct with a 15 year old female, who presented herself to them as an adult. Because they did not know the female was under the age of 17, they did not think they could be convicted of 22.011, so up until May 6, 2004 (the date of their pre-trial hearing), they desired to have a jury trial. But on the Morning of May 6, 2004 Morrison's attorney Ian Cantacuzene and Jason's attorney Tom MOrgan coerced them to plead guilty. In short, the Morrison and their Mother were told that their mistake of her age could not be used as a defense and if they went to trial, the jury would have to go by the letter of the law and they would be found guilty of sexually assaulting a child. And because of the nature of the offense they would go to prison for 15-20 years as sex offenders and get beat up and raped every day. The Morrisons'

mother became very emotional and pleaded with her sons to plead guilty so they would not have to go to prison and be beat up and raped. After much reluctance, the MOrrisons signed a plea bargain for nine years of deferred-adjudication probation. In order for them to accept the plea they also had to waive their right to appeal the probation order. The Morrisons were placed on probation for nine years. Morrison continued working in his home remodeling business. Jason lost his job as a fireman/paramedic and went to work trading real estate.

Six years later the state filed a motion to revoke probation and Morrison was arrested in May 2010. Tom Morgan was initially appointed to represent him, but since there was a conflict of interest that stemmed from his representation of Jason at the original plea hearing and him telling them they would go to prison regardless of the fact they thought the minor in their case was an adult, Morgan withdrew and David Rogers was appointed.

As Morrison remained in jail, awaiting his revocation hearing, he discovered the legal basis for his current 2254 petition, which in its infancy was simply that he was not guilty of 22.011 because the plain language of 22.011 in conjunction with 6.02, 8.02, and 2.01 of the Penal Code did not make 22.011 a strict liability crime. Almost immediately after discovering this at the law library, he petitioned the trial court to withdraw his involuntary guilty plea and afford him a new jury trial because of ineffective assistance of counsel. (See Exhibit "C" in Appendix "1"). The trial court ultimately denied his request claiming that his pro se pleadings could not be construed as a writ of habeas corpus because he cannot file pro se pleadings while having counsel. On April 28, 2011, MOrriosn's deferred probation was revoked and he was adjudicated as being guilty of 22.011, then sentenced to 16 years in prison.

David Rogers subsequently filed for appeal. Morrison's appeal was affirmed on May 30, 2013, and the C.C.A. refused Morrison's P.D.R. on October 23, 2013. ON December, 19, 2014 Morrison challenged his conviction and sentence in his state writ of habeas corpus (11.07) pursuant to the same claims he now presents in this 2254. On April 29, 2015 the C.C.A. denied his 11.07 without written order based on the trial court's findings. Morrison filed the instant 2254 petition on May 7, 2015.

2) <u>2244(d)(1)(B)</u>

In addition to showing the seven above reasons why Morrison should not be time barred, Morrison will also show why according to 2244(d)(1)(B) his claims are not time barred because the AEDPA's one-year time limitation period did not actually

start until the following described state created impediments were removed, ultimately giving him until May 31, 2015 to file the 2254 petition. His petition was timely filed on May 7, 2015, so his grounds 2-7, and 12 cannot be time barred as Miss Vindell has alleged in the AAG's Answer.

2244(d)(1)(B) requires a showing of"cause", which requires a case-specific showing of some objective factor external to the defense such as improper, unexpected, or preclusive state action that prevented or discouraged counsel or the defendant from raising a Federal claim in State court, see **Murray v. Carrier 477 U.S. 478, 488 (1986); McClensky v. Zant 499 U.S. 467, 494 (1991)).** The petitioner must also show prejudice by showing "the constitutional errors raised in the petition actually and substantially disadvantaged his defense so that he was denied fundamental fairness." Id at 494. Morrison will show cause and prejudice by showing how the State Courts', law enforcement's, and counsel's erroneous interpretation of 22.011, and other state actions impeded his ability to file his claims before he discovered them in Februrary 2011. And then once he discovered the legal basis of his claaims he will show how the state court again impeded his ability to raise the claims until he was able to file his 11.07 on December 19, 2014.

3) State created impediments between May 6, 2004 (original plea hearing) and March 8, 2011 (date of filing of Exhibit "C"/first pleading for relief)

A. State Court and Law Enforcement's Erroneous Interpretation:

One common thread among American Jurisprudence is the fact that a prisoner can be exonerated of a crime if he shows newly discovered exculpatory facts or evidence that was previously hidden from him or otherwise not available to him. The issues raised in the current 2254 petition are not much different from the issues raised in a case where the state withheld evidence that would show a defendant was not culpable of the charge the state brought against him. Nor is it different from a case where a defendant later discovers new facts or evidence that proved he was not culpable of commiting the crime in which he was charged. Petitioners seeking relief in cases such as these are not barred from Federal habeas review. See **Banks v. Dretke 540 U.S. 668, 691-698 (2004)** ("a petitioner shows "cause" when the reasons for his failure to develop facts in state-court proceedings was the State's suppression of relevant evidence"..."it was reasonable for Banks to rely on the prosecution's full disclosure representation."

The impediment in Banks was created by State prosecutors withholding exculpatory evidence. Comparably, what happens when a state court unconstitutionally withholds from a statute, the Legislature's given mens rea requirement, and as a result

hundreds of men go to prison for a crime they were not culpable of commiting? Much like a prosecutor withholding exculpatory evidence is considered to be an objective factor that is external to the defendant, a state court withholding a proper and duly enacted mens rea requirement from a statute is also an objective factor external to the defendant. In situations like that, why would the Federal Courts not review claims that will show the state court was wrong and the petitioner is actually innocent? That is essentially what Morrison is attempting to do here.

From day one, law enforcement, the prosecutor, the courts, even his own defense attorney told Morrison he was culpable of 22.011 even though he thought the girl was an adult and never intentionally or knowingly commited a crime. The true fact that he was not culpable of 22.011 was hidden from him for seven years, because he relied on and believed the State court, law enforcement, his defense counsel, and prosecution's misleading statements that he was guilty of 22.011, and his mistake of age did not matter. Like Morrison has previously said, he has since discovered these state officials all relied on an erroneous and unconstitutional interpretation of 22.011, and like the cases mentioned above, he should also be allowed to present these newly discovered facts as stated in grounds 2-7, and 12 to a Federal Court without being time barred.

The Texas Courts of Appeals caused this impediment when it decided to go against the Legislature's intent by changing the function of 22.011's culpable mental state. (See Ground 2), this constitutional violation further caused the statute to become unconstitutionally overbroad and vague, (see grounds 6 and 7), which further resulted in the state courts violating Morrison's and others' right to equal protection of laws (See ground 5). As a citizen unlearned in the law, it was reasonable for for Morrison to rely on the State's unconstitutional and erroneous interpretation of 22.011 as it was presented to him by counsel and the other agents of the state. It was this degree of reasonable reliance that impeded his ability to pursue and discover these claims prior to Februarary 2011. This impediment prejudiced Morrison because the State's interpretation of 22.011 led him to plead guilty to a crime in which he was factually innocent of commiting.

Basically, Morrison equates the Texas Courts of Appeals' strict liability interpretation to let us say, a Correctional officer in TDCJ who is a Sargeant. Of course that sargeants rank and authority should be respected and his orders should likewise be followed, but that sargeant cannot go around making up arbitrary rules for prisoners on a whim. Well technically they can because they often do. And some of the lower ranked regular correctional officers not knowing any better, or afraid of being disciplined will also enforce the arbitrary rule that

unnecessarily oppresses prisoners. But since those arbitrary rules are not created by the Warden, TDCJ Directors, or the Legislature, and are not posted to give fair notice to the prisoners, they can be overruled by a higher authority such as a Captain or Warden, because that rule is not the Gospel truth. However, many prisoners will not know any better, and out of ignorance or fear, they will follow the arbitrary rule that the sargeant made up, regardless of how foolish or oppressive the rule may be, even though it is not a real posted rule. This will go on until one of the prisoners reads the TDCJ policy and rules, then realizes that the sargeant's arbitrary rule is not even a rule at all. That prisoner then can eitheer talk to a captain or warden about the sargeant's made up rule, or they can file a grievance to challenge his rule. Most times when this happens, the sargeant will be counseled about his conduct and he will quit making up and enforcing arbitrary rules on his own.

Morrison uses that real life metaphor to show that he is that prisoner who read the rule book and realized that the Texas Court of Appeals' subjective strict liability interpretation of 22.011 is an arbitrary rule and the intermediate appellate court' arbitrary rule (which has not even been legitimized by the Texas Court of Criminal Appeals regarding 22.011), is not the Gospel truth as the trial court, the prosecutor, law enforcement, Cantacuzene, and Rogers have been conditioned to think. This has caused courts and attorneys like Rogers, Morgan, and Cantacuzene to be subjected to that arbitrary and subjective rule for the last 22 years, since the Houston Court of Appeals first made up that rule, regarding 22.011, in **Jackson v. State 889 S.W.2d 615 (Houston 14th dist. 1994).** By not properly reading the "rule book" or researching the law the lower court and counsel was essentially the other prisoners in this metaphor who by ignorance or fear continued to follow the arbitrary rule that was made up by the sargeant. Morrison now calls foul, and should be allowed to have his issues ruled on the merits because of the way he was prevented from raising the issues as described above, and as further stated:

B. Lulling Effect of the Unconstitutional Guilty Plea

In three ways the state lulled Morrison into inaction, further preventing him from filing his claims while he was on probation. As previously mentioned, Morrison was faced with a decision to either go to prison and get beat up and raped every day for 15 to 20 years, or to plead guilty and be placed on deferred adjudication probation with the possibility of never receiving a conviction or going to prison. Morrison chose the latter and seven years later discovered he did not receive true

notice of 22.011's elements, thus making his guilty plea involuntary. Morrison has already shown how he is entitled to equitable tolling during this seven years, but because the state impeded his ability to raise the claims while he was on probation by lulling him into inaction, he should be entitled to the protections of 2244(d)(1)(B), as well.

As mentioned earlier, a condition of his unconstitutional plea agreement disallowed MOrrison from appealing any claims on direct appeal. This prohibition was created by the state and Morrison was prejudiced because the involuntary guilty plea led him to involuntarily waiving his right to appeal and right to raise a defense, which like stated in section III/reason 5 supra, impeded his ability to raise the current claims during that time. The collateral effect that the threat of being raped and beat up in prison did not only unconstitutionally burden his right to a jury trial, but it also burdened his right to raise his claims on appeal or other postconviction proceedings.

In addition, the consequense of the unconstitutional plea lulled Morrison into inaction because by him choosing probation over prison, being on probation gave him a sence of liberty to a degree that he was able to continue with his life, so in all reality, discovering and filing his claims during the alleged one-year limitation period was not imminent, especially considering there was a possibility that he would not receive a conviction and go to prison anyway. In absence of equitable tolling, the state could prevent any defendant from timely filing meritorious claims by simply putting such a heavy burden on going to trial, and when the defendant takes the bait and chooses deferred probation, the state also requires him to waive his right to appeal. Then if after one year of probation the defendant discovers he is actually innocent, the State then essentially silences the defendant by sandbagging him with the AEDPA's Statute of Limintations defense. This scheme is in direct contrast with the Supreme Court's purpose for procedural defaults, where the doctrine is designed to ensure the state officials and the State courts actually give the petitioner a fair "procedural opportunity" to present the claim. See **Reed v. Ross 468 U.S. 1, 14 (1984).**

The unconstitutional effect of the guilty plea, along with the unconstitutional interpretation of 22.011 followed Morrison while he was on probation. While on probation, Morrison was also impeded from discovering and raising the claims in question because his probation officers and sex offender treatment counselors, also followed the leader and took on the erroneous 22.011 interpretation and told Morrison that he still had to participate in the sex offender treatment, despite the fact he thought the minor in his case was an adult.

Morrison had no reason to doubt these state officials, in fact, as a probationer, Morrison was expected to rely on their advice and do what they said. And because he believed what they said, he was lulled into inaction until he faced a probation revocation and was locked up in county jail. Out of boredom and wanting to get out of the cell he was cooped up in for a month, Morrison put in for the law library in Februrary 2011. Curiously, he searched the Penal Code he was in prison for, then to his shock, after reading 22.011, he discovered that the plain language of 22.011 said that his knowledge of whether the girl in his case was a child or not was in fact an essential element of 22.011. A little bit of further research and he found that Penal Code sections 2.01, 6.02, and 8.02 also supported his rationale. See **Parkus v. Delo 33F.3d 933, 938, 940 (8th Cir. 1994)** (where petitioner has "cause" for failing to challenge trial counsels inadequate investigation because petitioner believed state social services officials [**state officials**] false representation). (Empasis in brackets added). After Morrison discovered knowledge of age was an element of 22.011 he attempted to raise the claim in a pro se pleading to the court, but was impeded again by the trial court. (See section 4 infra).

C. Ineffective Assistance of Counsel Imputed to State as State Created Impediment

As mentioned in ground 12 and through Cantacuzene's own admission in his affidavit, Cantacuzene failed to investigate and raise the meritorious claims Morrison now presents. Cantacuzene did this without considereing the possibility that a claim long rejected by the State courts, might (because of the questionable nature of their purpose of rejecting the claims in the past), later prevail in a higher Federal court. Cantacuzene's deficient performance in this regard inhibited Morrison's ability to raise and preserve his claims that the Texas courts have unconstitutionally applied a strict Liability standard to 22.011. By not being familiar with the Separation of Powers Doctrine, and by not challenging the Texas courts' unconstitutional suspension of 22.011's mens rea requirement as it applied to Morrison, Cantacuzene's deficient performance disadvantaged Morrison's defense to such a degree that Morrison was not aware of the true nature of 22.011 as the plain language and legislative intent mandates. As a result he was coerced into pleading to a charge he was not culpable of commiting. Compare with **Gray v. Lynn 6 F.3D 265, 268-69 (5th Cir. 1993)**, where a lawer's failure to object to obvious defects in jury instruction on **elements of an offense** constituted IAC under Strickland v. Washington; also see **Hollis v. Davis 941 F.2d 1471, 1477-78 (11th Cir. 1991), where trial counsels failure to challenge** racially discriminatory

jury selection practices **because of his unfamiliarity with equal protection laws** constitutes IAC and "cause" for default.

From day one Morrison told Cantacuzene he did not think it was right that he could be found guilty of 22.011, when he was led to believe the minor was an adult. Had Cantacuzine put some effort into investigating Morrison's legal question, he could have easily discovered, as Morrison has done, the arguments that Morrison raises now, but Cantacuzene failed to put any effort into investigating, saying only, "ignorance of the law is no defense." See **Agan v. Singletary 12 F.3d 1012, 1017-18 (11th Cir. 1994)** (Counsel was ineffective because he "only spent seven hours conducting any sort of investigation of the case); **Foster v. Lockhart 9 F.3d 722-23 (8th Cir. 1993)** (finding counsel ineffective because decision not to investigate potential viable defense was unreasonable and could not be justified as "tactical decision" to focus exclusively on alternative defense.) Morrison asserts that there was no trial strategy in Cantacuzene not doing a proper investigation and research into the laws and simply basing his decision to coerce Morrison into pleading guilty from pre-22.011 law.

"'Cause exists for procedural default when attorney forgoes meritorious claim against known wishes of the client, or when counsel acts to protect self rather than 'in furtherance of litigation'". See **Colman v. Thompson 501 U.S. 722, 753;** and if a lawyer acts"out of fear for his own practice and reputation" behavior constitutes 'objective factor external to the defense' which is 'cause', for [a]... prcedural default," See Hollis at 1478-79.

From the statements in his affidavit, "I do not file frivolous claims," it seems Cantacuzene failed to investigate or raise Morrison's legal claims and questions because he was concerned that if he had raised the claims, that his reputation would be negatively affected. Whatever his reasoning, Morrison's right to effective assistance of counsel was violated by Cantacuzene not investigating and raising the claims Morrison now raises. This IAC claim can be imputed to the state as a state created impediment for purposes of 2244(d)(1)(B).

The Supreme Court in Colman id. at 754 concluded that IAC can constitute the type of "external impediment" that satisfies the "cause" requirement because "the Sixth Amendment itself requires that resposibility for default be imputed to the State." Cantacuzene also exhibited defitient performance by unconstitutionally burdening Morriosn's right to a jury trial by telling him that if he went to trial he would go to prison an get beat up and raped everyday for 15 to 20 years. Morrison has since discovered, that fortunately that is not true. Cantacuzene's

deficient performance prejudiced Morrison because Morrison involuntarally pled guilty to 22.011 and involuntarily waived his right to a defense and appeal. Morrison also believed his attorney's advise which lulled his inaction until he discovered the legal basis for his claim in Februrary 2011.

4) State Created Impediments Between March 8, 2011 (date of filing exhibit "C"/ first pleadin for relief) and December 19, 2015 (date of 11.07 filing)

Prior to MOrrison's revocation hearing on April 28, 2011, he discovered the legal basis for the claims he now raises in this 2254, and the record clearly shows that every since Morrison discovered the mens rea elements in 22.011 did in fact apply to him, he became diligent in raising his claims, but his attempts were impeded by the state court. The facts surrounding the courts impediments were discussed earlier in section III, and more fully spelled out in the facts prtion of ground 1, and argued in grounds 8, 10, 11, and 13. In short, Morrison asserts that the trial court initially impeded his ability to file a claim on March 8, 2011 when the Court Clerk rejected his pro se writ of habeas corpus as being improperly filed and failed to provide him notice that he needed to properly file it. There was also some confusion by the court regarding the status of Morriosn's legal representation during this time in regards to his habeas corpus pleading. On one hand the court claims he could not file a pro se habeas corpus because he was represented by counsel (Tom Morgan initially, the David Rogers), but on the other hand the court and Morrison's attorney explained that counsel was only assigned to represent Morrison for the revocation hearing, and that representation did not extend to assisting with a habeas corpus petition. This catch 22 left Morrison with no viable means to file a writ of habeas corpus, which impeded his ability to exercise in his right to writ of habeas corpus, and file and preserve his claims at that time in the trial court before conviction. (See ground 8, and section VI infra).

A. State Court's Failure to Provide Notice of IMproperly Filed Writ of Habeas Corpus:

The impact of the State court's failure to inform Morrison that his writ of habeas corpus pleadings were improperly filed proved to be an insurmountable impediment, because as a pro se prisoner, Morrison lacked the knowledge of law and court procedure in filing such petitions, and at that time he lacked the necessary access to the courts to know his petition was improperly filed. Had he been informed about his error, he surely would have filed the pleadings

properly. The court's failure to notify Morrison was "cause"for default. See **Alexander v. Dugger 841 F.2d 371, 373 (11th Cir. 1988)** ("Cause" for default shown where petitioner, or imprisoned pro se litigant, was not informed that clerk of court failed to place motion on docket.) Morrison's improperly filed pleadings "cause" was magnified by Rogers telling Morrison he would go to the courthouse and check to make sure his pleadings were properly filed, but never did, nor did Rogers inform him of the fact his pleading would be futile as he attempted it. (See ground 1 and section VII(D) infra).

A default may be attributable to the state when it stems from the State's failure to fulfill its obligation to facilitate pro se prisoners' access to the courts. The "constitutional right to access to the courts" requires that "States... shoulder the affirmative obligation to assure all prisoners meaninful access to the courts". See **Bounds v. Smith 430 U.S. 817, 821, 824 (1977).** This includes proviiding pro se prisoners with a reasonable opportunity to learn the "procedural prerequisites" for filing claims in State and Federal Court. See **Id at 825-26.** If the State deprived a petitioner of that opportunity, and if,as a result, petitioner cannot be "deemed to have been apprisedof... [the] existance [of a State procedural rule]'". See **Ford v. Georgia 498 U.S. 411, 423 (1991)**, Quoting **NAACP v. Alabama ex rel. Patterson 357 U.S. 449, 457 (1958),** the State has "'made compliance [with the procedural rule] impractable'" **Colman at 743**, and the petitioner cannot be held liable for his violation of that rule. Morrison did not discover his habeas pleadings were improperly filed until the day of his revocation hearing on April 28, 2011, when the Trial Judge told him she would not consider his letter as a writ of habeas corpus because it was pro se and he had counsel. Morrison was sentenced to 16 years prison because the trial court refused to hear his claims. The court's failure to notify him of his improperly filed pleadings is "cause" for default.

B. **State Court Failed to Provide Counsel to Assist Morrison in Raising a Claim in First State Appeal as of Right**

Morrison also asserts that the State court impeded his ability to file his claims by failing to appoint counsel to help him with a proceeding that would be equivalent to his first and only avenue to raise the claims he now raises in grounds 2-7, and 12. As mentioned earlier, a condition in Morrison's involuntary guilty plea prohibited him from filing these claims on direct appeal. His IAC claim for his 2004 pretrial hearing could not have been raised on direct appeal anyway, because Texas appeal courts look only at the record, and Cantacuzene's deficiency was not on the record.

See **Trevino v. Thaler 133 S.Ct 1911, 1921 (2013)** (the "State [Texas] procedural framwork, by reason of its design and operation, makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal").

In Coleman, the Supreme Court supports the existance of a constitutional right to counsel in a state postconviction proceeding when it functions as the equivalent of the "first state appeal as of right" with respect to claims that, as a matter of State law or of factual or procedural circumstances, could not be raised before the postconviction stage. The Court recognized in Coleman that the State has a "'duty...to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process'" and to ensure that '"the merits of the one and only appeal an indigent has of right are [not] decided without benifit of [effective] counsel.'" Coleman at 756. The Court addressed this issue again in **Martinez v. Ryan 132 S.Ct 1309**, to decide whether IAC in an initial-review collateral proceeding "may provide cause for a procedural default in a Federal habeas proceeding" Id. at 1315. The Court held that "inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." Id at 1315.

When a state requires a prisoner to raise ineffective assistance of trial counsel claims in a collateral proceeding (as Texas does), a prisoner may establish cause for default if the State court did not appoint counsel in the initial-review collateral proceeding for a claim of IAC at trial. Morrison has demonstrated that before his revocation hearing, he attempted to raise for the first time a claim as a result of ineffective assistance of his trial counsel, he involuntarily pleaded guilty to a charge he was not culpable of commiting. The state failed to provide him with an attorney to help him properly file his preconviction writ of habeas corpus, and as a result a default was caused. The Court in Martinez explained, "[a]llowing a federal habeas court to hear a claim of ineffective assistance of trial counsel when an attorney's errors (or absence of an attorney) caused a procedural default in an initial-review collateral proceeding, if undertaken without counsel...may not have been sufficient to ensure that proper consideration was given to a substantial claim." **132 S.Ct at 1318.**

The equitable rule in Martinez is not limited to ineffective assistance of trial counsel claims. The Court's reasoning logically extends this rule to other claims where (as in Morrison's other claims) a matter of state law or a factual or procedural circumstance prevented the claims from being raised before the

post-conviction stage. Morrison was prohibited from raising any claims prior to his initial attempt in his March 5, 2011 pro se letter to Judge Darr (Exhibit "C"), because as a result of his invo;untary guilty plea, his right to appeal was prohibited. Morrison was also prohibited from raising the claims between April 28, 2011 and December 19, 2015 because once his request for writ of habeas corpus was rejected and he was adjudicated guilty, Rogers file for direct appeal. Morrison was prohibited from filing his current claims during direct appeal because due to state procedural framework, his direct appeal was limited only to issues of his revocation hearing. Morrison, however, attempted to have Rogers raise his same claims that he attempted to raise in the March 5, 2011 letter on direct appeal, but Rogers did not raise them. (See Exhibits "L", "M").

Morrison has shown several ways the State impeded his ability to raise the claims Miss Vindell alleges are time barred. The impediments started with the Texas Courts of Appeals' erroneous and unconstitutional interpretation of 22.011, that, with a mixture of IAC, led to Morrison's involuntary guilty plea. Then for seven years Morrison was lulled into inaction by the effects of his involuntary guilty plea, until he discovered the legal basis for the claims he now raises, at which time the state court impeded his ability to raise the claims because they failed to provide him counsel, and they failed to provide him notice that his pro se writ of habeas corpus pleadings were improperly filed. The counsel they did provide, in all actuality was a barrier for his cause instead of a defender. Being that the State created impediments were not removed until 90 days after his P.D.R. was refused, the limitation period did not start until January 20, 2014 and was tolled during the pending review of his State 11.07 collateral review. The 11.07 was pending between December 19, 2014 (when Morrison mailed it) and April 29, 2015 (when the C.C.A. denied it). Pursuant to 2244(d)(1)(B) and 2244(d)(2) the limitation period to file the instant 2254 petition did not expire until May 31, 2015. Morrison filed the petition on May 7, 2015, within the limitation period, therefore it cannot be time barred as Miss Vindell Alleges.

5) Legal Basis Unavailable/Novelty Doctrine

As an alternative argument, Morrison would like to assert that; even if Cantacuzene and Rogers' performance could not be considered deficient under Strickland that the legal basis for his claims may not have been reasonably available to his counsel, which would also constitute "cause" for his failure to raise his claims prior to December 19, 2014. Because the State courts' erroneous and unconstitutional

application of the strict liability standard to 22.011 has been so deeply hidden in a web of murky case law and legal thought, which has been predicated on pre-1983 statutory rape laws, it did not become apparent that the strict liability standard was actually removed by the Legislature in 1983(when they prescribed the "intentionally or Knowingly" mens rea requirement into 22.011), until Morrison discovered the basis of his legal claims and filed them on December 19, 2014. Because the legal basis was unavailable until then, AEDPA's time limitation should start when Morrison filed his 11.07 in the state court. Since it was pending until April 29, 2015 the limitation period was tolled, ultimately extending the time expiration date to May 31, 2015. See **Coleman supra at 753** ("'showing that the...legal basis for a claim was not reasonably available to counsel would constitute cause'"); **Bously at 523 U.S. 622** ("Claim that 'is so novel that its legal basis is not reasonably available to counsel' may constitute cause for a procedural default." **Quoting Reed v. Ross 468 U.S. at 16.**

6) **Cumulative Effect of All Impediments**

In determining whether equitable tolling is appropriate, Morrison pleads with this Fine Court to consider the cumulative effect of all the impediments he has identified rather than to pick off each impediment categorically. The Supreme Court in **Holland v. Florida supra** rejected the 11th Circuit's "overly rigid per se approach" of categorically foreclosing equitable tolling to excuse late filings. Also See **Socha v. Boughton 763 F.3d 674, 685-87 (7th Cir. 2014):**

> "It does not matter that one could look at each of the circumstances encountered by Socha in isolation and decide that none by itself required equitable tolling. The mistake made by the District Court and the State was to conceive of the equitable tolling inquiry as the search for a single trump card, rather than an evaluation of the entire hand that the petitioner was dealt. In Holland, the Supreme Court disapproved the use of such a single minded approach. It wrote instead that a person's case is to be considered using a'flexible' standard that encompasses all the circumstances that he faced and the cumulative effect of those circumstances."

With every thing taken into account, Morrison's ability to raise his claims prior to December 19, 2014 were insurmountable. Morrison has shown both 'cause" and "actual prejudice" required for equitable tolling and 2244(d)(1)(B), and he respectfully requests this court to excuse the alleged late filing default and review all of Morrison's grounds on their merits, despite Miss Vindell's allegations that the grounds are time barred due to AEDPA, especially considering this is Morrison's first Federal habeas corpus petition and his claims not only affect him but thousands of other people as well.

VI. REPLY TO (CLAIM 8) AAG'S ANSWER PAGES 15-19

In Section III pages 15-19 of the AAG's Answer Miss Vindell either;
1) Completely misapprehends Morrison's ground 8 argument, or
2) she has deployed the archetypal smoke and mirrors magician's trick to hoodwink this Court into not seeing Morrison's constitutional claims for what they really are, and with the sleight of hand, she glosses over what she made disappear, with her own slanted version of what happened.

Morrison can tell by her writing that Miss Vindell is a very smart woman, and because his ground 8 was simply written and not hard to comprehend, he is almost certain it is the latter. Morrison was simply denied his right to writ of habeas corpus by the trial court, and all the hocus-pocus and shenanigans in the world cannot hide that fact.

The first thing Miss Vindell wanted to accomplish in her magic trick was to circumvent the main issue of his ground 8 to Morrison's detriment. She did this by transforming the intent of his writ of habeas corpus from what he attepted to do; a pre-conviction writ of habeas corpus under T.C.C.P. 11.07 Section 2, to a post-conviction writ of habeas corpus. See page 15 note 2 of the AAG's Answer where she acknowledges that Morrison refers to the state habeas as a "pre-conviction writ", but for obvious reasons, she wishes this Court to think that Morrison filed a post-conviction writ. She quoted RR3 pp.5-6...,or actually quoted the part she wanted this Court to see, and she set a smoke bomb off in front of the part she wanted to hide from this Court. She said:

> "See 3RR 5-6 ("Mr. Rogers:... Essetially, Mr. Morrison's position on the motion for continuance, Judge, is that he sent a letter to you that he believes is a writ of habeas corpus.[**smokebomb**]. I believe that he wants this court to hear the post-conviction writ prior to commencing with this hearing.)"

What she concealed in the smoke is recorded on the record in RR3 p.6 Lines 2-12, where Rogers explained Morrison's intentions for the writ of habeas corpus as:

> "He gave me this morning-- and I told him I wasn't assigned to help him with his writ of habeas corpus. I have only been assigned to do the motion to revoke probation. But he believes the letter in that file should be construed as a writ of habeas corpus under 11.07, section 2 Basically, after an indictment is filed in a felony case, other than a case in which the death penalty is imposed, and **before conviction**, the writ must be made returnable in the county where the offense is committed." (See T.C.C.P. 11.07 Section 2, emphasis added).

Rogers went on to admonish the court, that if the Court held the motion to revoke hearing, without hearing his writ of habeas corpus it would violate his rights to writ of habeas corpus with the trial court. (See RR3 P.6 line 16-18).

Further down on pages 8-9 of the RR3, the trial court confused Morrison's

intentions for the writ because David Rogers erred when he initially called it a post-conviction writ, then she acknowledged that MOrrison was on deferred probation and not yet convicted, therefore he could not have a post-conviction writ. Rogers cleared up the confusion by reaffirming that, "Morrison was just looking, your Honor, at after an indictment is found in a felony case, before a conviction, you can file a writ." (See RR3 p.9).

Morrison was not attempting or even suggesting that he wanted to file a post-conviction writ. He wanted to file a pre-conviction writ under 11.07 section 2 because he knew he was not yet convicted, and he wanted to exercise his right to writ of habeas corpus in the trial court so the trial court could look at his issues before he was convicted, as opposed to filing for post-conviction writ of habeas corpus in 11.07 section 3 where the writ would be made returnable to the Court of Criminal Appeals after a conviction was had. Also see Exhibit "E" page 1 of 10 where Morrison addresses this exact issue to Rogers in the letter he sent, a month before the trial. After Rogers told Morrison he should have filed the letter he sent the court as a writ of habeas corpus, Morrison went to the law library and did a search for writ of habeas corpus and T.C.C.P. 11.07 popped up, after reading it, he realized the only section that pertained to him in that statute was section 2 which addressed what would happen when a conviction has not been had, therefore, he knew because he had not been convicted at that time, that the writ would be returnable in Midland County. It was Morrison's intent to file writ of habeas corpus with the trial court, so the court would be aware of his ground 2, 5, 12, and 14 issues and give him a new jury trial bsed on the new evidence that he found that was withheld from him over the past seven years.

The trial court denied him that right because the trial Judge would not allow him to file the pre-conviction writ pro se while having court appointed counsel, and his attorney would not help him with it because he was not assigned to do any 11.07's, leaving Morrison in a catch-22 with no possible way to exercise in his right to writ of habeas corpus.

The reason Miss Vindell changed the main issues of Morrison's intent to file a pre-conviction writ to a post-conviction writ, is because her subsequent arguments would only work against a post-conviction writ or collateral attack after a conviction and sentence was adjudicated since there is no constitutional right to counsel in post-conviction collateral reviews. Her subsequent arguments would fail against a pre-conviction writ before a conviction and sentence had been had since MOrrison at that point was still entitled to effective counsel since he was facing the deprivation of his liberty. For example she said, "The director also

understands Morrison to allege that the trial court again commited error when it failed to appoint Morrison counsel to represent or counsel him on the **postconviction** writ he wished to file." At page 15 of AAG's Answer.

Morrison is aware of the fact that there is no constitutional right to counsel for post conviction writ of habeas corpus or other collateral review hearings. Miss Vindell is using that fact to enchant this Court into thinking Morrison was not entitled to effective counsel by saying he attepted to file a post-conviction writ. Morrison however, was not seeking post-conviction habeas relief, he was wanting the trial court to give him a hearing, so he could present the new evidence he found that was withheld from him for seven years, and so he could withdraw his involuntary guilty plea from 2004 and get a new jury trial **before he was convicted.** (See Grounds 1, 2,5,8,12, and 14). Morrison asserts that since he was not convicted or sentenced at that time he was constitutionally required to the effective assistance of counsel. Morrison has shown some reasons for support for this in Section V 4(B)supra, and he will show more support from Supreme Court precident that says he was entitled to effective counsel for the purposes of filing his preconviction writ of habeas corpus issues further throughout this reply to the AAG's Answer.

The April 28, 2011 revocation hearing was not a post-conviction writ of habeas corpus or other collateral review hearing because Morrison was not yet convicted or sentenced. Therefore, the case Miss Vindell Cites to on page 16 of the AAG's Answer, dealing with a, "prisoner's [] right to counsel when mounting collateral attacks **upon their convictions...**" is distinguishable. Finley was convicted.

Morrison's assertion is that he only had three options in exercising his right to writ of habeas corpus, before he was convicted.

1) He could file one pro se. Let the trial court know about his issues, and wait on a hearing.
2) He could hire an attorney to file one for him and let a professional do it.
3) His court appointed counsel, also a professional, who was hired by the state to be his advocate and try to give him the best result possible, could file his habeas claims for him at Morrison's request to make sure it was properly done. Or counsel could have directed Morrison how to properly do it pro se.

Because Morrison was in jail and had no money, option 2 was not possible. Since his attorney at that time was Morgan who was involved in his original involuntary guilty plea and a conflict of interest, option 3 was not available, therefore, he attempted to file his writ of habeas corpus pleadings pro se. Because he was ignorant of court procedure and 11.07 protocol, he filed it improperly.

After finding out from his new court appointed counsel, Rogers, thathe should have filed his pleadings as a writ of habeas corpus, Morrison on several occasions asked Rogers to make sure it was propely filed. Morrison found out two days before hearing that Rogers did not properly file his writ therefore, he asked him to do a motion for continuance. At that revocation hearing Morrison found out that his option 1 and option 3 were also not possible because the court said he could not file any pro se writs, while having court appointed counsel, despite the fact court appointed counsel was not appointed to do any 11.07 writs and would not help Morrison properly file his habeas corpus issues with the trial court. This essentially left MOrrison without any way to exercise his right to writ of habeas corpus in the trial court before he was convicted as afforded to him under Article 1 § 9 clause two of the United States Constitutiton and 11.07 section2.

Morrison contends that since he was indigent and could not afford an attorney, the state should have hired one for him to help fix the consitutional violations that caused his imprisonment, before he was convicted and sentenced to prison. They had hired one for him anyway, so technically that attorney could have helped Morrison exercise his right to a pre-conviction writ of habeas corpus, instead of being the main barrier for it by putting him in the catch-22 situation. Because Morrison was not yet convicted and was not doing any collateral attack, and all he wanted to do was withdraw his guilty plea and be afforded a new jury trial, before he was convicted and sentenced to prison, he was entitled to the same Sixth Amendment and Due Process guarantees, including the right to effective counsel, as anyone elese in this country that is facing a criminal prosecution which is putting their life, liberty, or property in jeopardy. (this will be discussed in more detail in section VII(C) infra, when Miss Vindell asserts that Morrison's ground 13, should be forclosed because of her opinion that he was not due effective counsel at a revocation of deferred adjudication probation hearing.)

Next Miss Vindell attempts to divert this Court's attention to not giving relief to this ground because, "Morrison's allegations challenge the state habeas process vis-à- vis the guise of the revocation court's alleged error, Morrison fails to state a viable claim for Federal habeas relief." (p.16 AAG's Answer).

She basically asserts that Federal relief cannot be had because Morrison did not say that he has been deprived of a United States constitutional right, "Because there is no Federal constitutional right to a continuance of a revocation hearing for purposes of filing a state habeas application attacking an underlying plea of guilty." She compaired that statement with **Vail v. Procunier 747 F.2d 277, 277 (5th Cir 1984)** and **Nichols v. Scott 69 F.3d 1255 (5th Cir. 1995).**

Morrison is unsure how those cases are even relevant to his situation. Vail was complaining about "infirmaties" relating to a state **postconviction/collateral attack** proceeding after he pled true to an enhancement count, and he was already convicted of the instant crime and the enhancement. Nichols filed a cross-appeal to the Court of Appeals on some issues that the District Court did not grant Writ of habeas corpus for. The State also appealed because the District Court did grant relief in one issue. The Fifth Circuit determined because his cumulative errorclaim did not involve matters of a constitutional dimension, that left only the matter of state habeas proceedings. "However errors in a state habeas proceeding cannot serve as a basis for setting aside a valid original conviction."(At 1275).

Both of those cases, the petitioner was given the opportunity to exercise in their right to habeas corpus when they sought it. Morrison was not. Both Vail and Nichols had already been convicted and sought post-conviction habeas relief, there may have been infirmaties or a non-favorable answer in those cases, but the fact remains they were given the opportunity to exercise in their right to writ of habeas corpus after their conviction. Morrison sought pre-conviction writ of habeas corpus at the trial court, but was denied that right. So to cloud the issues with cases that are irreconcilable to Morrison's claim, shows that the straws Miss Vindell desperately grasps for to support her position will crumble after someone reads past the headnotes of the cases she cites to, which is all too often true. Attorneys and courts only reading the headnotes in case law, and doing nothing else, is what got Morrison where he is at to begin with.(i.e reading the Texas Courts of Appeals' case headnotes and not reading the entire cases, and realizing all the headnotes were based of of law that was repealed as was Texas' strict liability statutory rape provision rape of a child(21.09)).

Morrison's complaint in ground 8 is not as Miss Vindell has made it look. Smoke and mirrors aside, the simple fact of the matter is Morrison attempted to exercise in his right to writ of habeas corpus that is guaranteed by the U.S. Constitution in Article 1 § 9 clause 2, and made applicable to the states under the Fourteenth Amendment. The trial court suspended Morrison's right to Writ of habeas corpus, despite the fact that Rogers warned the court not to. (See RR3 p.6). The trial court did not consider Morrison's pro se preconviction writ of habeas corpus because, "Morrison had counsel and when you have counsel, then counsel files any motions that you see necessary." (See RR3 p.9).

Morrison on several occasions saw it necessary for Rogers to make sure his writ of habeas corpus was properly filed. Even though Rogers said he was not appointed to help Morrison with the writ, he led Morrison to believe he would help him with it. (See Exhibits "E", "L", "M", "O", "P", "Q", "R").

Morrison attempted to have Rogers file his"motion that [he] [saw] necessary." Rogers, however, did not file it, and told Morrison that morning and told the court during the trial that he was not appointed to do any 11.07 writs. So the question here still reamins the same as it was asked on Morrison's 2254 petition. See page 7.4:

> "Under the trial court's reasoning to deny Morrison's continuance, how is a regular citizen suppose to exercise their right to writ of habeas corpus if they cannot do one pro se while having counsel, but at the same time counsel would not help him with it because he was not assigned to do it?"

The answer to that question is that person could not exercise his right to writ of habeas corpus because there would be no option left to file the writ for an indigent prisoner. Contrary to what the AAG's Answer says, Morrison did explicitly state a claim that said he was denied a right that was secured to him by the suspension clause of the United States Constitution. See 2254 petition pages 7.3-7.4 and brief in support pp. 132-142. That asserted claim is sufficient for purposes of 2254(a).

Miss Vindell, then goes into the absurd claim saying, "To the extent that Morrison's claims are liberally construed as alleging the violation of his Federal Due Process rights, they fare no better." (See p. 16 AAG's Answer). She then says "While the Supreme Court has held that there is no difference between parole and probation revocations for purposes of the minimal due process afforded to them, and because the Director cannot find, and Morrison has not produced, clear Supreme Court authority establishing that thess Due Process safeguards extend to deferred adjudication proceedings...and because the Supreme Court has not addresses the issues in a pre-judgment case such as Morrison's where there has not been a previously imposed sentence... thus because the issue is not settled by existing Supreme Court precident, relief is precluded by Teague."

Did she really say Morrison is not entitled to procedural Due Process at a defered adjudication revocation proceeding because the Supreme Court has not held that those proceedings are entitled to Due Process safeguards?

Miss Vindell has impetuously erred in that assertion and Morrison hopes this Court will recognize the blatant and tackless attempt to trifle the Court with such preposterous rhetoric and to contribute that for what it really is; fruitlessly throwing a bunch of stuff in the air desperately hoping something sticks. Because that seems true with a number of her allegations, Morrison asks the Court, with the exception of the claim Morrison conceded to in section VII(A) infra, that it dismisses the AAG's Answer because of its unreasonableness.

Before Morrison shows his proof as to why the AAG's Answer is unreasonable, in saying Morrison was not guaranteed due process safeguards at his revocation

hearing, he would first like to respectfully request this Court to take judicial notice to the fact that the Respondant's attorney has recognized that Morrison's case at that time was "a **Pre-judgment** case [] where there has **not been a previously imposed sentence.**" At AAG's ANswer p.17. That statement is Miss Vindell's acquiescence that Morrison's claims cannot be time-barred from the deferred probation order because there was no judgment and there was no sentence imposed. There was no judgment because there was no sentence. See **Burton v. Stewart 166 LED2d at 636-37.**

Regarding Miss Vindell's attempt to strip Morrison and others who face a probation revocation under deferred adjudication of their Due Process rights, in ground 8, Morrison is only complaing that the trial court suspended his right to writ of habeas corpus, and in violating that constitutionally protected right, it can be construed that the trial Judge also violated Morrison's Due Process rights (procedural or otherwise), because he was denied the opportunity to be heard and to present evidence of his actual innocence when he attempted to file his pre-conviction writ of habeas corpus. In doing so Morrison was also denied the right to confront the witnesses against him regarding his habeas issues. Not one person heard his arguments in court. "Due Process requires not just that probationers receive a full opportunity to present evidence on his behalf at a probation revocation hearing, but the Judge actually consider the evidence presented at the hearing." **Gonzalas v. Johnson 994 F.Supp 759 (1997).** In **Gonzalas v. Johnson,** the Court conluded that the state court decision was contrary to **Gagnon** and **Morrissey** which was a defeered-adjudication probation case where the petitioner raised a Due Process claim and prevailed.

The first inquiry in any Due Process challenge is whether the petitioner has been deprived of a protected property or liberty interest. It is obvious Morrison's liberty was in jeopardy based on the events that occured at the revocation hearing. He was facing the possibility of the court convicting him of the 22.011 charge and sentencing him to prison for up to 20 years. The Supreme Court held in **Mempa v. Rhay 389 U.S. 128, 88 S.Ct 254 (1967)** that in cases involving a revocation of probation for deferred sentences, like Morrison's case was, was a stage in the criminal proceeding and the full panalopy of due process is available. In **Morrissey** at **408 U.S. 484** , the same case Miss Vindell relies on to say Morrison was not entitled to Due Process, the Supreme Court said, "By whatever name, the liberty is valuable and must be seen as within the protections of the Fourteenth Amendment. Its termination calls for some orderly process however informal." Morrison's liberty was just as valuable, or possibly a little more valuable since he had no conviction or sentence. So Due Process must attach to his deferred

adjudication revocation hearing.

Miss Vindell's attempt to distinguish between a probationer who was sentenced to regular probation and able to receive due process safeguards at a subsequent probation revocation hearing and another probationer not being able to receive the same due process protections who was placed on deferred-adjudication probation, and also faced a probation revocation as well, is just as unavailing. The Supreme Court conferred Due Process rights to probation revocation hearings in **Gagnon v. Scarpelli 411 U.S. 778 (1993)**, as Miss Vindell explained on page 17 of the AAG's Answer. She then quoted Gagnon at 782 n.3 saying "despite the undoubted minor differences between probation and parole, the commentators have agreed the revocation of probation where sentence has been imposed previously is constitutionally indistinguishable from revocation of parole." Since parole revocations and probation revocations are both afforded the minimum Due Process requirements where the sentence has been previously imposed, it would be inconceivable to think that at least those same minimal due process safeguards would not be given to a probationer who faced a probation revocation without ever being previously sentenced. Morrison asserts and will prove later in section VII(C) (where he proves he is entitled to effective assistance of counsel not only at the revocation hearing, but also for his pre-conviction writ of habeas corpus), that a defendant at a deferred probation revocation hearing is entitled not only to the minimal Due Process requirements, but also to right to effective counsel and the full panalopy of rights that the Fifth, Sixth, and Fourteenth Amendemnts demand.

Regarding Miss Vindell's reliance on the state (11.07) habeas court already rejecting this claim (see pp.18-19 of AAG's Answer), her assertion is without merit and is as unreasonable as the state's answer was. It is also contrary to Supreme Court precident and an unreasonable determination of the facts that Morrison presented, which were on the record in the state 11.07 proceeding. (See pp.140-142 of brief).

Yes, it is true that Morrison had from May 6, 2004; 6 years 11 months, and 22 days to the date of the April 28, 2011 Motion to revoke hearing to file for Writ of habeas corpus. The state, and now Miss Vindell uses that time frame to say Morrison "had every right under 11.072 T.C.C.P. to file an application for postconviction writ of habeas corpus to attempt to set aside his deferred adjudication and community supervision..." and "a court is not required to continue a hearing on a motion to revoke [probation] to allow the defendant to file for postconviction writ of habeas corpus...to attack the underlying community supervision." Therefore, the state court found it did not prevent Morrison from

exercising his constitutional right for writ of habeas corpus in the trial court."

Morrison has already shown why he could not have raised his issues in a writ of habeas corpus in the trial court prior to March 2011. Up until then he was completely unaware of any reason to even file for writ of habeas corpus because of being misled by the courts and counsel about the CMS issues as the plain language of 22.011, 6.02, 8.02, and 2.01 mandate, and Supreme Court precident on mens rea and statutory construction have held. (See grounds 2, and 5). Morrison did not even know what a writ of habeas corpus was until after he filed Exhibit "C". The question is not: "Whether Morrison could have filed a writ of habeas corpus in the trial court from May 6, 2004 to April 28, 2011, in which to exercise that right?" The Constitution does not put a time limit on writ of habeas corpus, nor does it tell when a prisoner must exercise that right. The only question is: "Was Morrison's right to writ of habeas corpus suspended or burdened by the trial court when he felt the need to exercise in that right?" Morrison attempted to file a writ of habeas corpus pleading pro se, then again attempted to have counsel make sure it was filed properly. After finding out he would be having his revocation hearing he asked Rogers to file a motion to continue the revocation hearing. The trial court then did not consider morrison's pleadings and new evidence he tried to show them, nor did it allow him the opportunity to properly file writ of habeas corpus, essentially suspending that right by leaving him no avenue to exercise the right to writ of habeas corpus when he wanted to exercise that right.

Had the trial court given Morrison the opportunity to properly file his preconviction writ of habeas corpus, it could have issued the writ, understood the vagueness of the court of appeals' strict liability interpretation, and allowed Morrison a new jury trial and let the jury decide whether he was guilty or not based off of the plain language of 22.011, 6.02, 8.02, and 2.01. Or it could have taken into consideration the mitigation factor of Morrison's lack of mens rea and sentenced him to a lower sentence than the stiff 16 years he did receive. Or the trial court could have informed Morrison that his rationale according to the Texas Courts of Appeals was misplaced, and she had to go by their interpretation, then allowed him the opportunity to accept the seven year plea offer. Either way, had Morrison been allowed to exercise his right to writ of habeas corpus in the trial court before he was convicted and sentenced, there is a very reasonable probability that he would have been sentenced to less than 16 years in prison, or had a new trial. He would have also been able to raise his issues on direct appeal, had the trial court ruled against him.

Miss Vindell attempts to have the court foreclose his ground 8 by stating:

Morrison has not shown that the court's decision was an unreasonable application of clearly existing Federal law as established by the Supreme Court under 2254(d)(1) POOF!, he failed to over come the "relitigation bar" as embodied in AEDPA. (See AAG's Answer at p.19).

More magic here! Miss Vindell wants to make Morrison's "contrary to" claim for for the 2254(d)(1) requirement and his unreasonable determination of the facts claim for the 2254(d)(2) requirement claims vanish. Thanks to God, for today's technology that Morrison's two gateways past the 2254(d)(1),(2) litigation bar are preserved on the record, and cannot be easily made to disappear by an Assistant Attorney General who is determined to do or say anything to persuade this court in denying Morrison the relief as stated in his 2254 petition and its brief.

A quick look to Morrison's brief page 140 will show that he overcame the 2254(d)(1) requirement, by stating that the state court's disposition in the 11.07 proceeding was contrary to clearly established Federal law as determined by the Supreme Court in **Boumediene v. Bush 171LED2d 41 (2008)**, because that case held that it was unconstitutional to suspend writ of habeas corpus to terrorists and enemey combatants, therefore, it must be also unconstitutional to suspend Morrison's right to writ of habeas corpus as the trial court did. Morrison only has to show one out of the two clauses in 2254(d)(1). Morrison was not required to, but for extra support, he also showed how 2254(d)(2) was satisfied. On page 140-141 he proved with clear and convincing evidence that the state court's decision to deny relief for ground 8 on the merits was an unreasonable determination of the facts that he presented to the State Court in the 11.07. He may not have explicitly used the word "unreasonable" to attack the court's unreasonable decision to deny relief, but he did show that the trial court suspended his right to writ of habeas corpus as it pertains to Article 1 § 9 Clause 2 of the United States Constitution. The State Courts decision to deny relief was unreasonable because the trial court's justification for denying relief completely self-defeated itself. The trial court stated that Morrison had every right under 11.072 to file postconviction writ of habeas corpus. Then they said Morrison may file the 11.072 by counsel for Morrison, or by Morrison acting pro se, and Morrison has no right to appointed counsel for filing 11.072. Because the court did not allow him to properly file, or recognize the pro se preconviction writ he did file as a writ of habeas corpus, while having court appointed counsel, nor would they allow appointed counsel to file it for him because he had no right to appointed counsel for such purpose, and Morrison was indigent and could not retain counsel, the reasoning to deny Morrison relief for this ground was unreasonable beyond any fairminded disagreement because despite

what the court said about Morrison being able to file his writ acting pro se, in all actuality that is exactly what he tried to do, but the court in 2011 said he could not file a pro se writ while having counsel (who was court appointed) and now they say he had every opportunity to file a writ of habeas corpus pro se. The court left him no possible way to exercise his writ to habeas corpus and no fairminded jurist could disagreed with that, therefore those same fairminded jurists waould have disagreed with the trial courts decision to deny relief. (See Brief pp.140-142).

If for some reason this Honorable court does not agree with Morrison's argument regarding ground 8, because it is debateable among jurists of reason that he was denied his right to writ of habeas corpus in the trial court, MOrrison respectfully requests permission for a Certificate of Appealability.

CONCLUSION

If Morrison would have known the trial court was going to deny him the right to writ of habeas corpus, he would have accepted the seven year plea bargain then raised the issues on postconviction writ as he does now, but he would only have seven years in prison instead of 16. The prejudice in this ground is exactly that, he wanted to exercise his right to writ of habeas corpus and because the trial court suspended that right, he was sentenced to nine years more in prison all because of the new evidence he found that according to the letter of the law, he could have secured an acquittal. Also in denying him that right, he was unable to properly preserve his habeas issues for collateral attack or direct appeal.

If this Court graciously grants writ of habeas corpus on this ground, Morrison asks that his conviction and sentence be vacated and he be remanded for new trial. If the Court does that, then he pleads with the Court to make a ruling on the merits of his grounds 2,5and 7, so it will be clear where the intentionally or knowingly CMS in 22.011 attaches to, and whether the mistake of fact defense in section 8.02 applys, then he can use the ruling (if ruled in his favor) to prove to a jury that he did not intentionally or knowingly have sexual intercourse with a child under 17 years. Or if this Court rules as the Texas Courts have and 22.011 remains strict liability, then he could be remanded back and given the same opportunity to accept the seven year plea, where he would then accept the offer and have nine years less on his sentence. If this Court would think it easier or for reasons that justice be served to invoke the Rule of Lenity and sua sponte change Morrison's sentence or grant acquittal that would suffice as well. If this court rules in MOrrison's favor in grounds 2-7, or 14 then may this ground 8 be moot.

VII. REPLY TO (CLAIM 1 AAG'S ANSWER PAGES 20-34)

A. Miss Vindell's Argument Regarding Separate Punishment Hearing Not Necessary (Pages 31-34 of AAG'S Answer)

In section IV, pages 20-34 of the AAG's Answer, Miss Vindell claims "Morrison has failed to demonstrate that the state habeas court's denial of his ineffective assistance of revocation counsel [David Rogers] was unreasonable as required by AEDPA." Most of her claims in this section are unreasonable and without merit. Morrison will explain why, but first he would like to acknowledge that, even though Miss Vindell did not cite law that was clearly established by the Supreme Court, Morrison can see that her claims regarding counsel failing to request a separate punishment hearing to allow character witnesses to testify on Morrison's behalf (claim IV p.31-34), are correct. Morrison surely does not feel he will prevail in this issue in a bout in the Fifth Circuit or Supreme Court, therefore, Morrison humbly bows out of that claim, concedes, and will abandon that issue. Morrison could have obtained affidavits from most of the character witnesses he mentioned in ground 9, but was in a hurry to file his 11.07 because the AEDPA 1-year time limitation was closing in, so he needed to toll the time. Since Morrison has not shown affidavits from character witnesses he would have called if Rogers would have requested a separate punishment hearing, he abandons ground 9.

B. Miss Vindell's Argument that Morrison was not Denied His Right to be Heard (Pages 25-27 of AAG's Answer)

Regarding Morrison's ground 10's IAC claim that Rogers denied Morrison the right to address the court on his own behalf, Morrison's sole purpose for raising this ground was to show "cause" and "actual prejudice" for any possible procedural bars for unexhaustion that may have prevented Morrison from habeas relief on his other grounds raised. Miss Vindell argued against this ground on pages 25-27 under section IV(b) by saying that Morrison did not request to speak to the court until after the proceeding ended. Morrison brings that up to show another instance of the AAG's deception in her answer. The revocation proceeding had not ended when Morrison asked to speak on his own behalf. See page 7.5 of the 2254 petition and page 147 of the brief, where Morrison says "Before the court was adjourned and shortly after the sentence was pronounced Morrison asked the court if he could say something." That occured on page 66 of the RR3. The Court did not end the proceedings until page 67.

Since Miss Vindell has conceded to procedural bar regarding exhaustion of Morrison's grounds, Morrison will also abandon this ground 10. If Miss Vindell attempts to reraise procedural bar, or if the Court raises it sua sponte, then Morrison reserves the right to reraise and argue this ground further. This is not a concession. Since Morrison is no longer prejudiced by this issue, he abandons this issue so this court can focus its precious time on more pressing issues athand.

C. Miss Vindell Argues Against Right to Counsel at Deferred Hearing (Pages 20-21 of AAG's Answer)

On the preliminary matter in which Miss Vindell, on pages 20-21, asserts that Morrison is not entitled to the effective assistance of counsel at a deferred-adjudication probation revocation hearing, because "Morrison has failed to produce Supreme Court authority establishing the level of representation that a probationer is entitled" and is therefore "Teague barred", is unreasonable and completely without merit.

Morrison has right to assistance of counsel at his revocation hearing, as of a right promulgated in T.C.C.P. Article 42.12 Section 21. So one question asked that can resolve this issue is whether the deferred-adjudication revocation right to counsel in Article 42.12 Section 21 also comprehends the right to effective counsel under the Sixth Amendment. A quick look to **Evitts v. Lucey 105 S.Ct 830 (1995)** will answer that question, because the Court answered the similar question but in the context of an appellant who was given the right to counsel on Direct appeal after a conviction and sentence was had. The Court held that for purposes of analysis under the Due Process Clause, Lucey's appeal was an appeal as of right, thus triggering the right to counsel recognized in **Douglas v. California 372 U.S. 853, 83 S.Ct 814 (1963).**

Morrison under 42.12 was given the right to due process and to counsel at his revocation hearing. It would be total nonsense that the rationale in **Evitts v. Lucey** would not apply equally to a revocation of a deferred adjudication probation where a defendant has not been convicted and still faces sentencing. It has been held that a defendant has a right to effective counsel throughout **all** critical stages of a criminal proceeding including pretrial/pleas (**Hill v. Lockhart 106 S.Ct 366 (1985), Lafler v. Cooper 132 S.Ct 1376 (2012)**; at trial (**Strickland v. Washington 104 S.Ct 2052 (1984)**; at punishment phase (**Strickland v Washington, Mempa v. Rhay Supra)**; and at first appeal (**Douglas v. California id.)** It is absurd to think that a person facing 20 years of prison at a deferred probation revocation hearing is not entitled to the same safeguards discussed in Douglas v California

where that person has already been convicted, but still entitled to those safeguards.

It may be argued that a deferred-adjudication probation revocation hearing is is not a criminal prosecution for the purposes of the Sixth Amendment, but since **all** revocation of probation hearings implicate a probationer's fundamental liberty interests, it entitled him to procedural Due Process and right to assistance of effective counsel. See **Scott v. Illinois 440 U.S. 367, 99 S.Ct** 1158, where they held that "the Sixth and Fourteenth Amendments to the United States Constitution require only that **no** indigent criminal defendants be sentenced to a term of prison unless the state has afforded him the right to assistance of counsel in his defense." **99 S.Ct at** 1162. Also in **Lassiter v. Dept of Soc. Serv. of Durham City** 101 **S.Ct 2153, 2159 (1981)**, the Supreme Court held: "An indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty." Morrison was indigent and faced the deprivation of his liberty at his probation revocation hearing, and he lost 16 years of being away from his kids and other family because he was not given appointed counsel to effectively guide him the way the Sixth Amendment requires. **Argersinger v. Hamlin 92 S.Ct 2006 (1972)**, established that counsel **must be provided** before any indigent **may be sentenced** to prison, even where the crime is petty and the prison term is brief. At Morrison's revocation hearing, he had yet to be sentenced.

There are many cases that describe the parameters of the right to counsel. They mostly deal in criminal cases and trials which have been called the "main event" in the adjudication of guilt or innocence. See **Childress v. Johnson** 103 F.3d **1221, 1226-27 (5th Cir.** 1997), CF to **McFarland v Scott** 114 **S.Ct 2568, 2574(1994).** Nevertheless the right to counsel is not limited to the trial itself. A defendant has a constitutional right to the assistance of counsel at "every critical stage" of the proceedings against him, or whenever his"substatial rights may be affected". See **Mempa v. Rhay 389 U.S. 128, 134, 88 S.Ct 254, 257 (1967)** (Which was a deferred adjudication case where the Supreme Court held that a probationer has right to counsel at a deferred revocation hearing.)

¶orrison alleged this in his brief, seepage 14 where he quoted Hill v. Lockhart and Lafler v. Cooper, where the Supreme Court said that "it is well established that an accused is entitled to the effective assistance of counsel throughout **all critical stages of a criminal proceeding**, including the plea bargaining process. Morrison again argued that on page 22 of brief to say he should have been entitled to effective counsel for his preconviction writ of habeas corpus he wanted to file

Morrison has shown from the cases above that it has been firmly established that a person who is facing prison at a deferred revocation hearing is entitled

to the full panoply safeguards under the Fifth, Sixth, and Fourteenth Amendments of our Wonderful United States Constitution, and he is therefore not Teague barred. Miss Vindell's assertion that says Morrison was not entitled to Due Process or to the assistance of effective counsel at his deferred hearing is unreasonable and clearly contrary to the above stated Supreme Court precident. Miss Vindell claims the Supreme Court has not addressed the issue of the level of representation to which a probationer is entitled when facing a revocation of probation under a deferred-adjudication where there has not been a judgment or previously imposed sentence. That is entirely untrue. The Supreme Court specifically discussed the appointment of counsel in **Mempa v Rhay supra** to a person facing a revocation of probation at a deferred-adjudication revocation hearing where they held: "As a matter of Federal constitutional law, a lawyer must be afforded at the proceedings described above, whether they be labeled a revocation of probation or a deferred sentencing." The Supreme Court has also held in numerous cases that appointment of effective counsel is a right to all indigent persons facing prison, including plea bargaining concerning whether he should enter a guilty plea or go to trial. Since Morrison was not yet convicted or sentenced in the 2011 revocation hearing the above Federal law as determined by the Supreme Court mandates that he was entitled to effective counsel even for the purpose of helping him to properly file his preconviction writ of habeas corpus.

D. Miss Vindell's Argument Against Ground 1 (Pages 21-25 of AAG's Answer)

Morrison has already sufficiently argued his ground 1 IAC claim on pages 11-29 of his brief. Those pages along with the MOTION TO DISQUALIFY THE AFFIDAVIT OF DAVID ROGERS and Exhibits "C"-"R" included in Appendix "1", MOTION TO OBJECT TO THE TRIAL COURT'S FINDINGS/FLEMING BRIEF (which was included in the 11.07 proceedings), all prove with clear and convincing evidence that Morrison was denied the effective assistance of counsel from David Rogers, and was prejudiced because he received 16 years prison istead of 7 years. Morrison's arguments relating to ground 13, also are sufficient to show he was denied effective assistance of counsel and prejudiced because Rogers did not research the law as Morrison pointed out, nor did he object or raise the issues Morrison now raises, at the 2011 revocation hearing, where if Rogers would have properly raised the issues Morrison informed him about, there is a reasonable probability, by the reasons stated in this 2254, that the results of that revocation hearing would have turned out differently. (See pp.155-158 of brief).

Morrison understands that there is a lot of material to cover, and he sincerely

apologizes to this Court for the time it must take to go through it all, but when gone through, it will defeat Miss Vindell's conclusory alternative argument on page 21 that says Morrison fails to meet his burden to prove counsel was deficient and he suffered prejudice. Morrison assumes she knows that, so to strengthen her already flimsy allegation, she attempts to rely on the 2254(e) (Presumption of Correctness Clause), to say, "the state habeas court made a **credibility choice** against any assertion that Morrison's revocation counsel was ineffective," essentially what the State habeas court says goes. The problem with the presumption of correctness based on that "credibility choice", in this particular case, is that the credibility choice was not credible to begin with. In an unreasonable and biased way, the state-trial-habeas court went strictly off of only the untrue and not supported by the record statements that were in the affidavit of David Rogers. Therefore the statements could not even be corroborated with anything in the record, and in all reality MOrrison has proven in some instances those untrue statements actually contradict the record and other statements made in the affidavit. Morrison's IAC claims are, however, supported by the record and he proved the statements made by Rogers are untrue. (See MOtion to disqualify affidavitt of David Rogers and Exhibits "C"-"R").

In order to clear the 2254(e) hurdle and the AEDPA's presumption of correctness standard, Morrison has to prove with clear and convincing evidence that the State's habeas court's findings were erroneous. See **Schriro v Landrigan** 127 **S.Ct** 1933, **1939-40 (2007).** Morrison has done so and in reading his brief paged 11-29, Exhibits, Objections to the Trial Court Findings/Fleming Brief, and MOtion to Disqualify the Affidavit of David Rogers there will be a clear showing that he was denied effective assistance of counsel by Rogers and prejudiced because of the deficient performance.

So in light of all the evidence that Morrison presented in his 11.07 state writ of habeas corpus, weighed against the unsupported and untrue statements of David Rogers, (the only evidence the habeas court had to base its unreasonable decision) the "credibility choice" the state habeas court made in relying on those untrue statements, which Morrison proved untrue, was nothing but an unreasonable determination of the facts that Morrison presented to the State habeas court. (See pp.25-29 of brief). The reason it was unreasonable is because no reasonable jurist who objectively weighed all the evidence Morrison provided to the State habeas court, next to the unsupported and self-contradicting affidavit of David Rogers, would have agreed with the state habeas court's decision to say Rogers provided Morrison with effective counsel and deny Morrison relief.

Morrison has proven that he has so well established counsel's deficient performance and prejudice (not only by the Strickland standard, but also the standards in Lafler v. Cooper), that any reasonable jurist who took the time to read his entire 2254 petition and brief, and its exhibits, and other motions he provided to the state habeas court, and review the relevant parts of the reporter's record, would be in disagreement with the state court's unreasonable decision.

On pages 21-25 of the AAG's Answer, Miss Vindell's desperate, conclusory, and unsupported reasonings that discredit Morrison's IAC claims regarding ground 1 are wholly without merit, an unreasonable determination of the facts Morrison presented to the state court, and also contrary to supreme court precident that Morrison has presented. She specifically alleged on page 22 that Morrison's ground one claim lacks merit and should be dismissed because he did not meet the burden of proof now required in **Lafler v Cooper 132 S.Ct 1376 at 1385 (2012).** That "but for counsel's failure to advise him on the likelihood of a new trial on his original guilty plea, that a court would have accepted a 7 year sentence for such a heinous crime."

First of all, the original court must not have thought it as being too heinous since it placed Morrison on deferred probation for 9 years instead of immediately putting him in prison. Also Miss Vindell again tries to deceive the court in saying that Morrison has not shown that the trial court would have accepted the seven year plea. Morrison clearly showed this on pages 16-17 of his brief, and also in Exhibits "F", "G", "H", where Morrison's brother Jason, who had the same charges as Morrison, and also had the same rationale as Morrison, but was properly counseled by his counsel regarding the rejection of the same seven year plea bargain, therefore Jason accepted the seven year plea offer and the court accepted the terms of the same seven year plea agreement, for Jason's exact same case and in the exact same court, indicating that the court would have also accepted Morrison's 7 year plea bargain had counsel not been ineffective, causing Morrison to reject the plea offer. Morrison clearly satisfied the terms listed in Lafler at 132 S.Ct 1385. Morrison was aware of the new terms in Lafler v Cooper, and he specifically proved each one in his brief, as he relied on Lafler v. Cooper for the clearly established federal law to gain access to this Fine Federal Court. (See pp.16-18, 23-24, and 28 of brief).

Regarding Miss Vindell quoting the affidavit of David Rogers and the state habeas court's reliance upon it from page 22-24. Morrison has already shown those statements to be untrue and has shown the state court's reliance upon them as an unreasonable determination of the facts and evidence Morrison presented. (See Motion

to disqualify Affidavit of David Rogers, Exhibits "C"-"R", ground one Brief pp25-29, Motion to Object to the Trial Courts Findings/Fleming Brief). Morrison does not see it necessary to reargue that here. He is confident this Judicious Court will go through the state record, exhibits, and motions that prove Miss Vindell's answer is unreasonable as the State's decision was. In doing so it will be easy to also recognize that what Miss Vindell said on page 24 in the last paragraph is fanciful. The only thing in the record that"supports the state habeas court's ultimate determination that this claim is without merit", is the affidavit of David Rogers. And Morrison has proven it to be untrue. It does not contradict Morrison's claims. Morrison has actually proven that it contradicts itself and the record, and is almost entirely untrue.

Miss Vindell again makes another untrue statement to this court by stating: "Morrison's version of events is not supported by anything beyond his own self-serving account of counsel's performance." That is untrue because Morrison has presented plenty of actual evidence that shows the truth of that deceptive statement is that Rogers's affidavit is not supported by anything beyond his own self-serving account to conceal his dereliction of duty. The record does show that Rogers' representation fell below the professional standard of reasonableness and Morrison was prejudiced. Contrary to what Miss Vindell says, Morrison did establish that that the state court's decision was contrary to Supreme Court law. He could not show the unreasonable determination factor in 2254(d)(1) on any ground except for ground 7, because the trial court in its findings did not even attempt to use or refer to any Supreme Court law. Morrison also showed that the state court's decision satisfied the "unreasonable determination of the facts presented" clause in 2254(d)(2). (See pages 25-29 of brief).

A look to all the evidence Morrison presented to ~~the~~ this habeas court in conjunction with the record, clearly shows Morrison proved with clear and convincing evidence that the state court's decision was objectively unreasonable in the sense that no fairminded jurist weighing the evidence Morrison presented against the untrue statements in the affidavit of David Rogers would have agreed with the State court's decision to deny relief, because Morrison clearly has proven that he has satisfied the standards of IAC under both prongs of strickland and the other standards required in Lafler v. Cooper at 1385. Because Morrison has proved ground one has merit, he recommends that if this court does not give relief on another ground, that because of this IAC, that the court at the least remand for resentencing and demand the state to reoffer the seven year plea agreement, or invoke the Rule of Lenity Doctrine and acquit Morrison or change sentence to seven years. If this

Honorable Court for some reason is in disagreement with Morrison's Claims and chooses not to give relief in this alternative argument, because Morrison has shown that his ground one is debateable among jurists of reason, and that there was a constitutional violation, he respectively requests the Court to give permission for Certificate of Appealability.

E. Miss Vindell's Argument Against Ground 13 (Pages 27-31 of AAG's Answer)

Miss Vindell comes out in her argument against Morrison's ground 13's IAC claim with citing a couple cases that say counsel is not required to "make frivolous objections", and another that says "a petition that presents conclusory allegations unsupported by specifics is subject to summary dismissal." See p.28 of AAG's Answer. Contrary to what Rogers, Cantacuzene, the State trial court, or Miss Vindell have said, the rationale that Morrison discussed with Rogers regarding his reasonings for writ of habeas corpus in the trial court were not frivolous, nor were they unsupported or conclusory, as proved in Morrison's grounds 2-7, and 14 where he has shown plenty of merit which is backed up with Supreme Court, and Fifth Ciruit support for his claims.(See Morrison's brief in support of 2254 petition.)

This portion of Morrison's reply is meant to argue not only for ground 13, but for ground 12 as well, since they are the same IAC claim but with both Rogers and Cantacuzene.

Morrison has shown that several constitutitional errors led him to unknowingly and involuntarily entering into a guilty plea in the 2004 pre-trial hearing. That in effect, rendered the guilty plea invalid. "A plea of guilty cannot support a judgment of guilt unless it was voluntary in a constitutional sense." **Henderson v. Morgan 426 U.S. 637, 644-45 (1976).** These constitutional violations were raised in the state 11.07, and the instant 2254 petition as grounds 2, 5, 7, 12, and 14, some of which the director claims are time barred, but like Morrison previously has shown, since these grounds are the Constitutional violations that led to his erroneous 2011 conviction and sentence, they must pass the alleged time bar through the actual innocence gateway as stated in ground 14, or by the other six suits of armor that Morrison donned as stated in section III supra. As Morrison has proven, the accumulation of these constitutional violations led to him not receiving "real notice" of the "true nature" of 22.011 and its elements he pleaded guilty to, instead MOrrison "was affirmatively misinformed about [the] critical elements of the charged offense, and that misinformation caused him to plead guilty" to a charge he did not factually commit (see ground 2, 5, 12, and 14). Compare to

United States v. Brown 117 F.3d 471, 476-77 (11th Cir 1997)(internal citations omitted).

It is well established that a plea may be involuntary if a defendant "has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt... [a]s the Supreme Court has plainly instructed, the voluntariness requirement is not satisfied unless the defendant received real notice of the true nature of the charged crime." **id at 476.** The Supreme Court stated in **McCarthy v. United States 394 U.S. 459, 466,** that"because a guilty plea is an admiision **of all the elements** of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." Under this precedence, Morrison's guilty plea in 2004, could not have been voluntary because his attorney and the state courts provided him with an incorrect "understanding of the law in relation to the facts" of his case, as shown in grounds 2, 5, and 7 of the 2254 petition. The State's statutory construction analysis of 22.011 is in clear contrast of how the Supreme Court would interpret the plain language reading of 22.011. For examples of the Supreme Court's statutory construction analysis model related to the application of mens rea elements see **Flores-Figueroa v. U.S. 173 LED2d 853 (2009); U.S v. Williams 170 LED2d 650, 663 (2008); U.S. v. X-Citement Video 115 S.Ct 464 (1994); Staples v. U.S. 114 S.ct 1793 (1994); Liparota v. U.S. 105 S.Ct 2084 (1985).** Also see ground 2 and 5 where Morrison did a comprehensive and detailed brief showing how these Supreme Court cases prove that 22.011 is not strict liability.

Morrison's missapprehension concerning the critical mens rea requirement of 22.011substatially undermines the reliability of his plea, especially considering that the Texas Courts of Appeals'(Texas' intermediate Courts) only explanation for their strict liability interpretation are from cases that are predicated from pre-22.011/1983 statutory rape laws that did not contain a mens rea element, therefore when those old laws were repealed by 22.011 which has an explicit mens rea requirement that plainly modifies "of a child", 22.011 superseded the old law and is no longer strict liability. This issue has not been in front of the Court of Criminal Appeals rgarding 22.011. They did however rule on whether it was constitutional to have Texas' Aggrivated sexual assault of a child statute 22.021 as being strict liability. That was in **Fleming v. State 441 S.W.3d 253 (Tex Cr. App. 2014).** They did rule that 22.021 was constitutionally capable of being strict liability. However, there were Three of the C.C.A. Justices who dissented, and two other Justices said they would have also dissented in cases like MOrrison's where the minor was from 14 to 16 years and the sexual conduct was consensual. See **Fleming at 293** (Keller, Price, and Johnson dissent). Also see Justice Alacla's

and Justice Cochran concurring opinions. (See Motion to Object to the Trial Court's Findings of Facts and Conclusions of Law/Morrison's Supplimental Brief Regarding Fleming v. State), which he filed with the C.C.A. on April 6, 2015. Morrison thought that since the C.C.A. ruled on Fleming less than a year before his 22.011 case came before them and it was a 22.021 case where they discussed the instances of situations like MOrrison's, that they would have ruled in his favor since five of the nine Justices in Fleming said they would have ruled favorably in 22.011 cases, where the minor was 14-16 years, as opposed to 13 years or younger. Morrison's issues therefore remain unanswered by the state courts.

Morrison never admitted to the proper mens rea requirements of the crime he was charged with. And because he was misinformed that his lack of intent or knowledge was not an element of the charge, his guilty plea was made in ignorance of the "true nature of the charge against him" **Henderson v. Morgan 426 U.S. at 645.**

Morrison stated in open court that he did not understand how he could be guilty of a crime he did not intentionally or knowingly commit. In fact Morrison was not persuaded to plead guilty until his counsel told him, his brother, and his mother that ignorance of the girl's age did not matter, and if he went to trial, he would be found guilty and go to prison for 15-20 years as a sex offender, and be beat up and raped everyday. Morrison a first time breaker of the law and very naive about prison, court procedure, and the law, was faced with two choices: 1) plead guilty and receive deferred adjudication probation, or 2) go to trial, and then go to prison and be beat up and raped everyday for 15-20 years. The latter choice imposed an unconstitutional burden on MOrrison's right to a jury trial. See **U.S. v. Jackson 390 U.S. 570, 572.** After much urging from his attorney, and from his emotionally worried sick mother, Morrison finaly caved and pleaded guilty.

In a similar situation where the accused pled guilty because he, his counsel, and the courts misunderstood the elements of a crime, in **Bousley v. U.S. 523 U.S. 614,** the Supreme Court held that Bousley was entitled to a hearing on the merits of his misinformation claim, and if on remand could show actual innocence to relieve his procedural default in failing to contest his guilty plea... if the record disclosed that at the time of the plea, neither the accused, nor his counsel, nor the District Court correctly understood the essential elements of the crime with which he was charged, then the plea was invalid under the Federal Constitution.

Had Morrison received real notice of the true nature of 22.011 and its elements as mandated by the Legislature, he would not have pleaded guilty, but rather chosen trial by jury. Morrison discussed this logic with Rogers at there first meeting, and Rogers told him he would help him with his efforts, but did not.

Morrison was expecting to get relief from the trial court by getting a new jury trial because according to the letter of the law he was actually innocent of 22.011. The way things occured, Rogers could not have been any more ineffective than he was. Both Morrison and Rogers know this, that is why Rogers was so dishonest in his affidavit regarding his deficient performance. Morrison did not know it at that time, but he was in a very precarious situation. Morrison was under the impression that Rogers understood his logic and was going to make sure his writ of habeas corpus pleadings were filed properly. Therefore Morrison sat back and waited thinking his revocation hearing would continue to get postponed, but two days before his revocation hearing Rogers tells him about the hearing and also tells him he would not help him with the writ of habeas corpus. Rogers was ineffective as stated in ground one and ground 13, that is how Morrison ended up with 16 years prison.

To show that there is a very reasonable probability that Morrison would not have been found guilty beyond a reasonable doubt by a reasonable jury, we need not go any further than **Johnson v. State 967 S.W.2d 848, 858 (Tex. Cr. Ap. 1998)**, where the jury acquitted Johnson of 22.021 because Johnson did not know the complainant was a child. Johnson was however convicted of Indeceny With a Child (22.11), because that statute was not equipped with an "intentionally" or "knowinly" mens rea requirement like 22.011 and 22.021. So being that a reasonable jury acquitted Johnson of a similar written statute that Morrison was charged and both argued ignorance or mistake of age, Morrison asserted to Rogers that a jury would not have found him guilty either. Morrison explained his views of the plain language of the statutes in coordination with 2.01, 6.02, and 8.02 and contrary to what Rogers says in his affidavit, Rogers told Morrison that his logic regarding the intentionally or knowingly culpable mental state was sound.

Contrary to what Miss Vindell alleges, by inferring that Morrison did not tell counsel about his claims (see page 29, paragraph 2 of AAG's Answer, where she quoted several cases that show that "the reasonablness of an investigation depends in large part on the information supplied by the defendant"), as stated already, Morrison informed Rogers about his reasonings for Rogers to investigate his claims. (See grounds 1, 13, Exhibits "E", "L", "M"-"R", and Motion to disqualify affidavit of David Rogers). Rogers was appointed to be Morrison's advocate, and he chose to lead Morrison to believe he would help him with his issues, but with the exception of filing Morrison's MOtion for Continuance, he never did anything to help. Rogers claims in his affidavit that he researched Morrison's case and told Morrison that his rationale was an incorrect lega rule and there was case law that went against his rationale. Morrison has shown in his Motion to Disqualify the Affidavit

of David Rogers that those statements are wholly untrue. Even if Rogers had gone to the cases he has said he researched, and told Morrison about at their first meeting, Rogers still should have been more diligent and researched further into the questionalbe strict liability interpretstion, and at the least objected to the issues Morrison now raises so they would be properly preserved for direct review and collateral attack, especially since the Supreme Court has decided so many cases in Morrison's favor that deal with mens rea, and statutory construction issues as Morrison has shown in grounds 2 and 5, which a lot of those cases were available in 2011.

The fact of the matter is that after Morrison explained his rationale to Rogers, he was under the impression Rogers would make sure his writ was filed properly, before his revocation hearing was held. That is why Morrison rejected the seven year plea bargain. Rogers never checked into making sure his pleadings were properly filed, and Morrison was left in jail waiting on the court to give him a habeas hearing in hopes for a new jury trial so he could avoid a conviction from his probation violations. Morrison then went to the revocation hearing and it was found that he violated his conditions of probation and he was convicted and sentenced to prison for 16 years.

There can be no reasonable trial strategy when counsel does not properly investigate, research, or present Morrison's claims, especially after Morrison clearly explained his rationale to Rogers, and pointed to the plain language of 22,011 in conjunction with 6.02, 8.02, and 2.01. (See Exhibits "E", "O"-"N"). With a little bit of due diligence Rogers could have discovered that the Court of Appeals' strict liability interpretation was predicated from pre-1983 law, and strict liability has made 22.011 unconstitutional, as Morrison has proved in grounds 2, 5, 6, and 7.

Rogers in his affidavit, and the trial court in the trial court's findings, both went strictly off of the courts of Appeals' erroneous interpretation of 22.011, as Miss Vindell shows on page 30 of the AAG's Answer. That statement that was made by the trial court is contrary to Federal law as Determined by the Supreme Court as morrison has proved in this 2254 and 11.07. That quote by the state court (also on page 83-84 of the trial court's findings), is the reason the trial court denied relief for ground 13, and it is completely unsupported and conclusory.

Morrison has shown on pages 155-158 of his brief that the trial court's decision to deny relief for ground 13 was contrary to Supreme Court law, and an unreasonable determination of the facts that Morrison presented as demanded in 2254(d)(1),(2). Pages 156-158 in his brief show Miss Vindell's argument on pages 30-31 of the

AAG's Answer, which claim that the trial court's reasoning for denying relief was correct, are as unreasonable as the state habeas court's decision was, because Morrison has proved with clear and convincing evidence that the state court's reasonings were conclusory, unreasonable, and erroneous. The presumption of correctness standard in 2254(e)(1), has therefore, not been met by Miss Vindell's conclusory allegations that say the state court's (also conclusory allegations) regarding the "law being clear and 22.011 is a strict liability offense and the actor's knowledge that the child was under the age of 17 is not an element of the offense..., 22.011 is not overbroad or vague..., and does not violate equal protection of the law..." Rogers, Cantacuzene, the State Court, theCourt of Criminal Appeals, nor has the Attorney General's Office brought anything to the table that supports the Texas courts assertion that 22.011 is a strict liability offense, it is not unconstitutionally vague or overbroad, or that it does not violate the equal protection of the law. In Morrison's 11.07 and now his 2254, he has proven with clear and convincing evidence that:1) By the Texas courts interpretating 22.011 as strict liability has gone against the plain language of the statute and legislative intent, they have suspended 2.01, 6.02, and 8.02 to garner the result they wanted, violating the Separation of Powers Doctrine. In doing that the strict liability interpretation has 2) violated the equal protection of laws, 3) made 22.011 unconstitutionally vague, and 4) has made 22.011 unconstitutitonally overbroad. 5) Plus the spousal defense in 22.011 has also made 22.011 violate equal protection. Therefore the state court's decision to deny relief in saying that Morrison was not denied effective counsel, which was based solely from its conclusory statements...oh yeah, and Rogers' unsupported by the record affidavit, that decision did not even rest on the Strickland prongs as required by Federal law. Therefore the state court's decision is unreasonable because any reasonable jurist weighing the mounds of evidence Morrison has presented with the conclusory allegations that Rogers, the state court, and now Miss Vindell have presented, would not agree with the state court's decision that David Rogers was an effective counselor, because they would clearly see that had Rogers done a proper investigation into the questions of law Morrison brought to his attention, and actually researched the laws and raised the same claims Morrison now raises, that there is a reasonable probability that the 2011 revocation hearing would have turned out differently, where Morrison would have obtained relief from the trial court, or Court of Appeals in direct review.

Rogers claims in his affidavit that he "researched the issues related to the victim's age." He then stated he downloaded four cases that dealt with mistake of age

regarding statutory rape cases, and they all said to the effect that mistake of age is not a defense, and the state does not have to prove that the defendant knew the complainant's age. Out of those four cases, not one was an actual 22.011 case. Even though **Mateo v. State 935 S.W.2d** 512 **(1996)** did discuss 22.011, it and the others were 22.021, 21.11, or 21.09 cases. The 21.09 case was the pre-1983/pre-22.011 case all other recent mistake of age cases rely on, which is **Vasquez v. State 622 S.W.2d 864 (Tex Crim 1981),** where there was no explicit mens rea element in 21.09. Had Rogers delved into these cases past the headnotes he would have realized that in **Mateo**, the Austin Court of Appeals changed the law by adding words into the 22.021 statute to arbitrarily give it the strict liability interpretation that they wanted. They said at 513 that "A person commits an aggrivated sexual assault if he intentionally or knowingly 'causes the penetration of the...female sexual organ of a child by any means' or 'causes the sexual organ of a child to contact the... sexual organ of another person, including the actor' **and if** 'the victim is younger than 14 years of age'." The court added the words "and if" to the language of the statute to give it the reading that they wanted. As Morrison has shown in grounds 2, and 5 courts are not allowed to do this.

The Mateo court then proceeded to support its decision with **Vasquz id**, and **Roof v. State 665 S.W.2d 490 (TX. CR. Ap. 1984)** (a 21.11 case). They at 514 said "There is nothing in the legislative history of 22.011 and 22.021 indicating that the legislature intended to nullify the holding in Vasquez and to require the state to prove the defendant's knowledge of the complainant's age in the prosecution for sexual assault of a child. They then say in footnote 4, that "the bill analysis indicates that **the only substantive change** intended was to make the new offense gender-neutral." Had Rogers properly researched this case he would have easily noticed that the Austin Court of Appeals erred when they went first to extratextual factors and did not mention that another main change in 22.011 from 21.09 was that the legislature included a mens rea requirement in the heading of the statute.

Had Rogers read **Johnson v. State 967 S.W.2d at 858 Supra**, he would have noticed that Johnson was acquitted on his 22.011 charge with the same rationale that Morrison told him about. Which in all reality, Morrison told Rogers about the Johnson case in their first meeting, and Rogers was completely unaware of the Johnson case, showing that Rogers did not even research those cases like he claimed in in affidavit.

By not properly researching the law, Rogers was essentially the other state prisoners in Morrison's earlier metaphor, who by ignorance or fear continued to follow the arbitrary rule made up by the sargeant, but had he done a little bit

of due diligence and "read the rulebook" and researched the issues Morrison presented to him, he could have been a true advocate for Morrison and presented the issues Morrison now raises, but since he wanted to take the easy way out and follow the crowd, or he was fearful that he would have been chided by other attorneys or the court for filing "frivolous" claims, he deprived Morrison of effective counsel and Morrison was prejudiced because his meritorious issues were simply disregarded because of the Courts of Appeals' arbitrary strict liability interpretation. Because of the lack of research, Rogers and the state court think it is the law of the land, just because one intermediate court said it a long time ago, then that opinion has set bad precident, which Morrison some twenty years later has proven to be unconstitutional. Since Morrison has proven that the Texas courts strict liability interpretaion of 22.011 is arbitrary and unconstitutional, the State court's decision to deny relief was unreasonable, because it was unsupported and conclusory.

Miss Vindell on pages 29-30 asserts that Morrison did not specify at what point Rogers should have raised his claims, that led to his guilty plea. She quoted "Fed Writ Pet at 7.7 Pet Memo at 155-58", then she says Morrison did not provide specific facts or law to support his claim that such an investigation or objection by Rogers would have changed the outcome, of his revocation proceeding. That statement is more of the same with Miss Vinsell's answer; trying to make things that are clearly visible disappear. A look to p.7.7 and Morrison's brief pp.155-158 will prove that Morrison did specifically allege that Rogers failed to object and preserve for further review Morrison's habeas corpus issues. See pp.7.7-7.8 where Morrison explained what Rogers failed to object to, and because of the 20 page limit in the 2254 petition, Morrison noted that the prejudice would be in brief. In the brief on page 155 Morrison continued with "Morrison was harmed by[Rogers'] ineffectivness because these issues were not raised at trial, where there is a reasonable probability (because of the strong evidence that existed in support of Morrison's rationale) that Morrison would have receved relief had Rogers raised these issues before the trial court."Morrison further explains his prejudice by Rogers not objecting or preserving his issues for further review and he stated, "if Rogers would have done a proper investigation... and properly raised these issues at the revocation hearing or filed the proper objections or pre-trial motions, then there is a reasonable probability that Morrison would have received relief at the trial court level or on direct appeal." That shows Morrison did "specify at what point Rogers should have raised his objections to Morrison's claims and it also provides the specific facts and law regarding the strong evidence that existed in support of Morrison's rationale, (which is explained by the Supreme Court law

that he cited to throught his 11.07 and 2254, which was available in 2011 and 2004). Had that strong evidence been shown to the trial court or court of Appeals, there is a reasonable probability things would have turned out differently for Morrison, where he would have been afforded a new jury trial, been acquitted, and surely he would have been sentenced to a less severe sentence than 16 years. Morrison has proven that the state courts dicision to deny relief for his grounf 13's IAC claim was unreasonable and contrary to Supreme Court Law.

Because Morrison has shown that a constitutional violation has occured, and it is debatable among jurists of reason that his counsel was ineffective and he has been prejudiced as stated above, and the state court's decision is unreasonable, Morrison respectfully requests that a Certificate of Appealability be allowed if this Court chooses not to grant relief for this ground 13 and ground 12.

F. Miss Vindell's Argument Against Ground 10 (Pages 34-37 of AAG's Answer)

Because of the reasons stated in Sections V, VII(C),(E), Miss Vindell's arguments that trial counsel was effective apply the same to Appellate counsel since counsel in both stages were the same. The logic and reasons as stated above, also show that Rogers was ineffective as appellate counsel, as he was at trial. Morrison has shown with the information already stated and in his brief at pp.150-152 that appellate counsel was ineffective for not raising on appeal the trial court's errors in overruling MOrrison's continuance and suspending his right to Writ of Habeas Corpus as stated in ground 8.

Again, since the state habeas court only relied on counsel's unsupported by the record, statements in the Affidavid by David Rogers to make the determination to deny relief, and did not base its decision on Strickland or any other Federal law as determined by the Supreme Court, that decision was contrary to Supreme Court law that Morrison has presented and like the rest of the IAC claims and other claims where the state habeas court did not address Federal law as determined by the Supreme Court, a de novo review should be had in this Federal Court. If this Court decides to rule on the merits of MOrrison's Grounds 2-7, 12, or 14, then may this issue be moot.

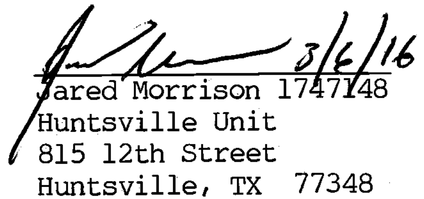
PRAYER

All things consider, Morrison prays in the name of his Lord and Savior Jesus, that this Honorable Court graciously allows his constitutional claims in this 2254 to bypass the alleged time bar, and objectively looks at each issue , then give him a favorable ruling. Morrison prays that this Court will see the lack of merit and unreasonableness in the AAG's Answer and not adopt or consider it. Psalms 118: 12-29 (Thank you God for all you wisdom and guidance.)

PRISONER'S UNSWORN DECLARATION

I, Jared Morrison declare under the penalty of perjury that the aforementioned statements are true and correct.

Executed on March 6, 2016



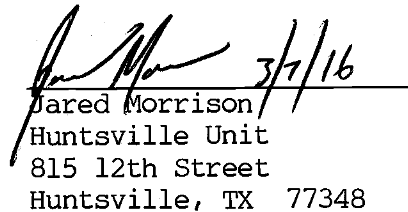
Jared Morrison 1747148
Huntsville Unit
815 12th Street
Huntsville, TX 77348

CERTIFICATE OF SERVICE

Petitioner, Jared Morrison, does hereby certify that a true and correct copy of this; PETITIONER'S REPLY TO RESPONDANT'S ANSWER is being sent to the Respondant's attorney, Gwendolyn S. Vindell, by placing in the prison mailbox receptical postage pre-paid to the following addresses on March 7, 2016. The original is being sent to the United States District Court for the Western District of Texas, Midland-Odessa Division on the same day.

Clerk U.S. District Court
Western District of Texas
United States Courthouse
200 E. Wall Street, Room 222
Midland, TX 79701..................Original

Gwendolyn S. Vindell
Assistant Attorney General
P.O. Box 12548
Austin, TX 78711-2548..............Carbon Copy



Jared Morrison
Huntsville Unit
815 12th Street
Huntsville, TX 77348

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release April 24, 1996

STATEMENT BY THE PRESIDENT

I have today signed into law S. 735, the "Antiterrorism and Effective Death Penalty Act of 1996." This legislation is an important step forward in the Federal Government's continuing efforts to combat terrorism.

I first transmitted antiterrorism legislation to the Congress in February 1995. Most of the proposals in that legislation, the "Omnibus Counterterrorism Act of 1995," were aimed at fighting international terrorism. After the tragedy in Oklahoma City, I asked Federal law enforcement agencies to reassess their needs and determine which tools would help them meet the new challenge of domestic terrorism. They produced, and I transmitted to the Congress, the "Antiterrorism Amendments Act of 1995" in May 1995.

Together, these two proposals took a comprehensive approach to fighting terrorism both at home and abroad. I am pleased that the Congress included most of the provisions of these proposals in this legislation. As a result, our law enforcement officials will have tough new tools to stop terrorists before they strike and to bring them to justice if they do. In particular, this legislation will:

— provide broad new Federal jurisdiction to prosecute anyone who commits a terrorist attack in the United States or who uses the United States as a planning ground for attacks overseas;

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- ban fund raising in the United States that supports terrorist organizations;

- allow U.S. officials to deport terrorists from American soil without being compelled by the terrorist to divulge classified information, and to bar terrorists from entering the United States in the first place;

- require plastic explosives to contain chemical markers so that criminals who use them—like the ones that blew up Pam Am Flight 103—can be tracked down and prosecuted;

- enable the Government to issue regulations requiring that chemical taggants be added to some other types of explosives so that police can better trace bombs to the criminals who make them;

- increase our controls over biological and chemical weapons;

- toughen penalties over a range of terrorist crimes;

- ban the sale of defense goods and services to countries that I determine are not "cooperating fully" with U.S. antiterrorism efforts. Such a determination will require a review of country's overall level of cooperation in our efforts to fight terrorism, taking into account our counterterrorism objectives with that country and a realistic assessment of its capabilities.

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By enacting this legislation, the United States remains in the forefront of the inter-national effort to fight terrorism through tougher laws and resolute enforcement.

Nevertheless, as strong as this bill is, it should have been stronger. For example, I asked the Congress to give U.S. law enforcement increased wiretap authority in terrorism cases, including the power to seek multi-point wiretaps, enabling police to follow a suspected terrorist from phone to phone, and authority for the kind of emergency wiretaps available in organized crime cases. But the Congress refused.

After I proposed that the Secretary of the Treasury consider the inclusion of taggants in explosive materials, so that bombs can be traced more easily to the bomb makers, the Congress exempted black and smokeless powder—two of the most commonly used substances in improvised explosive devices.

I asked that law enforcement be given increased access to hotel, phone and other records in terrorism cases. I asked for a mandatory penalty for those who knowingly transfer a firearm for use in a violent felony. I asked for a longer statute of limitations to allow law enforcement more time to prosecute terrorists who use weapons such as machine guns, sawed-off shotguns, and explosive devices. But the Congress stripped each of these provisions out of the bill. And when I asked for a ban on cop-killer bullets, the Congress delivered only a study which will delay real action to protect our Nation's police officers.

I intend to keep urging the Congress to give our law enforcement officials all the tools they need and deserve to carry on the fight against international and domestic terrorism. This is no time to give the criminals a break.

There are three other portions of this bill that warrant comment. First, I have long sought to streamline Federal appeals for convicted criminals sentenced to the death penalty. For too long, and in too many cases, endless death row appeals have stood in the way of justice being served. Some have expressed the concern that two provisions of this important bill could be interpreted in a manner that would undercut meaningful Federal habeas corpus review. I have signed this bill because I am confident that the Federal courts will interpret these provisions to preserve independent review of Federal legal claims and the bedrock constitutional principle of an independent judiciary.

Section 104(3) provides that a Federal district court may not issue a writ of habeas corpus with

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respect to any claim adjudicated on the merits in State court unless the decision reached was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court. Some have suggested that this provision will limit the authority of the Federal courts to bring their own independent judgment to bear on questions of law and mixed question of law and fact that come before them on habeas corpus.

In the great 1803 case of *Marbury v. Madison*, Chief Justice John Marshall explained for the Supreme Court that "(i)t is emphatically the province and duty of the judicial department to say what the law is." Section 104(3) would be subject to serious constitutional challenge if it were read to preclude the Federal courts from making and independent determination about "what the law is" in cases within their jurisdiction. I expect that the courts, following their usual practice of construing ambiguous statutes to avoid constitutional problems, will read section 104 to permit independent Federal court review of constitutional claims based on the Supreme Court's interpretation of the Constitution and Federal laws.

Section 104(4) limits evidentiary hearings in Federal habeas corpus cases when "the applicant has failed to develop the factual basis of a claim in State court proceedings." If this provision were read to deny litigants a meaningful opportunity to prove the facts necessary to vindicate Federal rights, it would raise serious constitutional questions. I do not read it that way. The provision applies to situations in which "the applicant has failed to develop the factual basis" of his or her claim. Therefore, section 104(4) is not triggered when some factor that is not fairly attributable to the applicant prevented evidence from being developed in State court.

Preserving the Federal courts' authority to hear evidence and decide questions of law has implications that go far beyond the issue of prisoners' rights. Our constitutional ideal of a limited government that must respect individual freedom has been a practical reality because independent Federal courts have the power "to say what the law is" and to apply the law to the cases before them. I have signed this bill on the understanding that the courts can and will interpret these provisions of section 104 in accordance with this ideal.

This bill also makes a number of major, ill-advised changes in our immigration laws having nothing to do with fighting terrorism. These provisions eliminate most remedial relief for long-term legal residents and restrict a key protection for battered spouses and children. The provisions will produce extraordinary administrative burdens on the Immigration and Naturalization Service. The Administration will urge the Congress to correct them in the pending immigration reform legislation.

I also regret that the Congress included in this legislation a commission to study Federal law enforcement that was inspired by special interests who are no friends of our Nation's law enforcement officers. The Congress has responsibility to oversee the operation of Federal law enforcement; to cede this power to an unelected and unaccountable commission is a mistake. Our Nation's resources would be better spent supporting the men and women in law enforcement, not creating a commission that will only

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get in their way.

I hope that there will be an opportunity to revisit these and other issues, as well as some of the other proposals this Administration has made, but upon which the Congress refused to act.

This legislation is a real step in the right direction. Although it does not contain everything we need to combat terrorism, it provides valuable tools for stopping and punishing terrorists. It stands as a tribute to the victims of terrorism and to the men and women in law enforcement who dedicated their lives to protecting all of us from the scourge of terrorist activity.

WILLIAM J. CLINTON

THE WHITE HOUSE
April 24, 1996.

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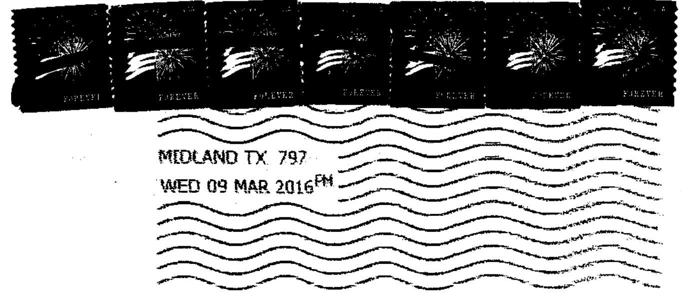
JARED MORRISON 1747148
Huntsville UNIT
815 12th STREET
Huntsville, TX 77348



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WESTERN DISTRICT OF TEXAS
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CLERK, U.S. DISTRICT COURT
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UNITED STATES COURTHOUSE
200 E. WALL STREET, Room 222
MIDLAND, TX 79701