OBJECTIONS TO PROCEDURAL BAR

The state courts and Attorney General/Respondant keep trying to apply procedural bars that are inapplicable to this fundamental jurisdictional error, where jurisdiction was never conferred to the court.

The bars that they are attempting to apply, the authority they cite and the authority making those bars inapplicable are as follows [explanation/application added throughout]:

1) In Re Robbins, (1998) 18 Cal.4th. 770, 780. The court will not entertain habeas corpus claims that are untimely.

The 9th Circuit has held that the date on which the petitioner discovered the factual predicate of a claim ... was not the date he became aware of [the factual basis][that petitioner was charged with a felony via complaint] ... but the date on which he became aware of facts [legal basis] [that charging a felony by complaint was in fact illegal] that allowed him to assert in objective good faith that he was prejudiced by this deficiency. [The claim for relief only became apparent to petitioner when he was made aware of the illegal act].[1] (See End Notes).

Therefore, this newly discovered fact of law should not be ignored. Why would it be in the interests of justice to allow the District Attorney to break the law and get away with it simply because petitioner wasn't aware of the breach of law until petitioner read an article about it? And that was after a period of time that the District Attorney feels that as long as petitioner doesn't catch the violation in time then "we're off the hook." The State may not violate the law in order to enforce the law, as it has done in petitioner's case. Violation of the law nullifies the judgment and renders it void. "Our court has held that a collateral attack based on a violation of a state rule of criminal procedure will succeed and a due process

violation will be found when the petitioner shows that he was prejudiced or that his rights were affected thereby".[2]

"Jurisdiction can be challenged at any time"[3] and again "A judgment rendered by a court lacking in subject matter jurisdiction is void and may be challenged at any time"[4] "There is no time limit for attacking a void judgment under Federal Rules of Civil Procedure Rule 60(b)(4)."[5] And where the court expressly held that "Rule 60(b)(4) carries no real time limit".[6] "A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time".[7]

At least one court has held that no time limit applies to a motion under Rule 60(b)(4) because a void judgment can never acquire validity through laches (where the court vacated a judgment as void 30 years after entry).[8] Even Rule 9(a) of the Rules Governing § 2254 cases, Advisory Committee Notes state: 9(a) provides that a petition attacking the judgment of a state court may be dismissed on the grounds of "Delay" if the petitioner knew or should have known of the existence of the grounds he is presently asserting in the petition **AND** the delay has resulted in the state being prejudiced in its ability to respond to the petition. If the delay is more than 5 years after the judgment of conviction, prejudice is presumed, although this presumption is rebutable by petitioner. Otherwise the state has the burden of showing such prejudice.[9] The state must be prejudiced for the bar to apply. For want of a showing of prejudice by the state, there clearly is no applicable "untimely" procedural bar with this petition.

2) In Re Clark, (1993) 5 Cal.4th. 750, 767-769. The court will not entertain habeas corpus claims that are successive. Successive petitions, this is a discretionary policy: As there is no logical reason why multiple petitions cannot be considered. In particular, a court should consider the new petition if the previous denial was based on some procedural problem and did not address the merits of the issue.[10] A second petition is not successive where the legal conclusion reached in the prior proceeding is plainly erroneous. (Ends of justice not "served by refusal to consider the merits of the second

application when denial of the first rested on a court's plain error of law").[11]

Furthermore, if the petition attacks the judgment on procedural grounds or attacks a defect in the integrity of the proceedings, it is not subject to the limitations on second or successive petitions.[12] A second petition is not successive where the hearing in the prior proceeding was not Full and Fair.[13] The successive petition rule applies only "after an evidentiary hearing on the merits of an issue of law."[14] A second petition is not successive and not subject to dismissal under Sanders v. United States, 373 U.S. 1, 15-16 (1963) where the prior determination was not on the merits.[15]

Controlling weight may be given to a denial of a prior application for a federal habeas corpus or § 2255, only if: 1) The same ground in the subsequent application was determined adversely to the applicant on the prior application, 2) The prior determination was on the merits, and 3) The ends of justice would not be served by reaching the merits of the subsequent application.[16]

The successive petition requirement is that the prior determination of the same ground has been on the merits. This requirement is in 28 U.S.C. § 2244(b) and has been reiterated many times since Sanders v. United States, 373 U.S. 1, 16-17 (1963).[17]

3) In Re Dixon, (1953) 41 Cal.2d. 756, 759. The court will not entertain habeas corpus claims that could have been, but were not raised on appeal.

The policy of exhaustion of appellate remedies is discretionary, and when special circumstances exist, a person's failure to raise a criminal case issue on direct appeal does not preclude filing a habeas corpus.[18] Also failure, to raise an issue on appeal will not preclude a habeas petition where the sentencing or convicting court lacked fundamental jurisdiction, acted in excess of jurisdiction, or there was a change in law affecting the case that occurred after the appeal.[19]

"Jurisdiction may be challenged at any time".[20] And jurisdiction can be challenged in any court. "A court cannot

confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court."[21]

There is no rule that is clearly stated and consistently applied in habeas corpus proceedings to allow the application of a procedural bar (for the state to be able to use a procedural bar the state law procedural rule must be clearly and consistently applied by the state courts). (The state courts sometimes make exceptions to the rule for cases involving fundamental Constitutional matters).[22] Therefore, a "failure to raise on appeal" procedural bar cannot be applied.

"A **void** judgment is one which, from its inception, was a complete nullity and without legal effect."[23] "Subject matter jurisdiction" because it involves a court's power to hear a case, can never be "forfietted or waived."[24] Further, the law requires that: "No state" shall "deprive any person of life, liberty ...or property without due process of law,"[25] and "A person may not be deprived of life, liberty or property without due process of law".[26] Petitioners Constitutionally protected rights have been violated by confinement pursuant to a void judgment. There is also no default unless "the last state court rendering a judgment in the case "clearly" and "expressly" states that its judgment rests on a state procedural bar." Absent an "explicit" statement of this sort, a state court's reference to a procedural bar or even a discussion of its applicability to the instant case will not suffice."[27]

If the last state court in a given case did not see fit to rely on a procedural ground in rejecting a claim and instead decided the claim on its merits, the federal courts may do likewise, for in such cases there is no federalism basis for deferring to any adequate and independent state procedural ground of decision, (failure of state's attorney to raise procedural bar in state courts leads supreme court to conclude that the state courts rejected petitioner's claim on the merits),[28] and the state cannot claim that the defendant's default deprived the state of a fair opportunity to dispose of the claim.[29] No decision on the merits, no bar is applicable, petitioner's rights have been violated and the writ must issue.

As the statute suggests, the central mission of the great writ should be the substance of "justice", not the form of procedures. As Justice Frankfurter explained in his separate opinion in Brown v. Allen, 344 U.S. 433, 498 (1953): "The meritorious claims are few, but our procedures must insure that those few claims are not stifled by undiscriminating generalities, the complexities of our federalism and the workings of a scheme of government involving the interplay of two governments, one of which is subject to limitations enforceable by the other, are not to be escaped by simple rigid rules which, by avoiding some abuses, generate others".[30]

CONCLUSION:

Time limits and bars (including the above mentioned ones) cannot be applied to Fundamental Jurisdictional issues, as the courts and Attorney General are attempting to do as a reason to deny habeas relief and avoid addressing the issue at hand: that the law has been broken by the District Attorney and petitioner's rights are continuing to be deprived under color of law by the failure thus far to remedy or even acknowledge the issue. "Jurisdiction can be challenged at any time"[31] in any court, "A court cannot confer jurisdiction where none existed [like claiming petitioner waived his right to raise the issues because he did not raise it prior to trial, or that the filing of an information somehow cured the violation] and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court." (underline added for emphasis).[32] "Once challenged jurisdiction cannot be assumed, it must be proven to exist."[33] Once challenged "the burden shifts to the court to prove jurisdiction".[34]

"There is no discretion to ignore lack of jurisdiction".[35] And there is no time limit for attacking a void judgment under Federal Rules of Civil Procedure Section 60(b)(4), (where the court expressly held that Rule 60(b)(4) carries no real time limit).[36] Moreover, the court has held that "when the grant or denial (of a habeas petition) turns on the validity of the judgment, discretion has no place for operation. If the judgment is void it must be set aside ..."[37]

With all of the controlling cases, laws and rules dealing with lack of jurisdiction and how it can be raised at any time, in any court, and where the Constitutions state "No state" shall "Deprive any person of life, liberty or property without due process of law"[38] and "a person shall not be deprived of life, liberty or property without due process of law"[39] why are the courts ignoring the jurisdictional question?

Because due process of law involves the court acquiring jurisdiction, due process is a Constitutionally protected right that requires prompt resolution, (courts are expected to "take seriously congress's desire to accelerate the federal habeas process")[40] "District courts should not summarily dismiss prisoner petitions containing sufficient allegations of Constitutional violations. Moreover, due to pro se petitioners general lack of expertise, courts should review habeas petitions with a lenient eye, allowing borderline cases to proceed."[41] The laws are clear that it is not to be taken lightly (as the state courts and Attorney General have done by claiming inapplicable procedural bars) in order that when someone whose rights are violated and are then prosecuted anyway, there can be a speedy resolution, instead of making an innocent person spend years in prison with their cries for help falling on deaf ears.

The Attorney General in 2005 (Bill Lockyer) stated that "the government may not even be involved in the preparation, investigation and filing of a felony complaint".[42] And in 2019 Attorney General Xavier Becerra stated "Under California law a felony complaint does not confer trial jurisdiction".[43] The Attorney General knowing that "Jurisdiction is fundamental without it courts cannot proceed at all in any case",[44] and when the court proceeds anyway, that it violates the rights of the defendant and that the case must be dismissed. Inasmuch as this is the Attorney General's legal position which is supported by law, then why are the District Attorneys still prosecuting felonies via an illegal complaint? And why isn't the Attorney General petitioning/ moving the courts to dismiss the cases charged by felony complaint? Even more confusing is why are the Attorney General/ Respondent and Courts even arguing against the habeas petition, instead of taking their oath of

office to uphold the Constitution and the rights of citizens seriously and simply issue a reply to the court in support of granting the writ of habeas corpus?

Such action would support their oath of office and take much less effort and resources (legal as well as court resources) than arguing about procedural bars which have no application. It's as though they want to keep everyone in prison (even the innocent people) at all costs. At least one Judge has ruled on this behavior. "District Attorneys are, of course, to be commended for investigating crime and prosecuting, with vigor, those accused of crime. But prosecutive zeal and honesty in belief of guilt are not the substitute for the orderly, lawful and Constitutional process and guarantees ... Constitutional guarantees are not arbitrary pronouncements adopted to protect the guilty, and make it difficult for sincere hard working prosecutors. They are the result of hundreds of years of struggle in fighting governmental oppression. They are necessary to protect the innocent. If an accused, even a guilty accused, cannot be convicted except by violation of these principals, then he should not and cannot be lawfully convicted ...District Attorneys are not the arbiters of guilt or innocence ...If a conviction is secured by means not sanctioned by law, the conviction cannot and should not stand."[45] "In any event, it is the alleged violation of a Constitutional Right that triggers a finding of "irreparable harm".[46]

It is time to hold those responsible for these violations accountable!

"Whoever walks in integrity walks securely,
but whoever takes crooked paths will be found out."[47](HOLY BIBLE NIV)

"He who walks with integrity walks securely,
but he who perverts his ways will become known."[48](HOLY BIBLE NKJV)

Crooked paths and perversion have been the standard in this process thus far, will you as officers of the court choose **INTEGRITY?**

UNTIMELY-END NOTES

1. Hasan v. Galaza, (9th Cir. 2001) 254 F.3d 1150, 1154.
2. Carter v. McArthy, 806 F.2d 1373, 1376 FN.2 (9th Cir. 1986).
3. Basso v. Utah Power & Light Co., 495 F.2d 906, 910 (1974).
4. In Re Harris, (1993) 5 Cal.4th 813, 836.
5. Eggl v. Fleetguard, 198 ND 166, 583 N.W. 2d 812.
6. Marquette Corp. V. Priester, 234 F.Supp. 799 (R.D.S.C. 1964).
7. In Re Marrisge of Hampshire, 261 Kan. 854, 862 (1997).
8. Crosby v. Bradstreet Co., 512 F.2d 483 (2nd Cir. 1963).
9. Rule 9(a), of the Rules Governing Section 2254 Cases.

SUCCESSIVE-END NOTES

10. People v. Barragan, (2004) 32 Cal.4th 236, 241-242.
11. Cancino v. Craven, 467 F.2d 1243, 1246 (9th Cir. 1972).
12. Federal Rules, of Civil Procedure Rule 60(b)(4).
13. Sanders v. United States, 373 U.S. 1, 16-17 (1963).
14. Rule 9(b), of the Rules Governing Section 2254 Cases.
15. Hill v. Lockhart, 894 F.2d 1009, 1010 (8th Cir. 1990).
16. Rule 9(B), of the Rules Governing Section 2254 Cases, Advisory Committee Notes.
17. 28 U.S.C. § 2244(b).

RAISED ON APPEAL-END NOTES

18. In Re Antazo, (1970) 3 Cal.3d 100.
    In Re Fuller, (1981) 24 Cal.App.3d 251, 255.
19. In Re Harris, (1993) 5 Cal.4th 813, 836.
20. Basso v. Utah Power & Light Co., 495 F.2d 906, 910 (1974).
21. Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 23; 27 S. Ct. 236 (1907)
22. Hill v. Roe, (9th Cir. 2003) 321 F.3d 787;
    Powell v. Lambert, (9th Cir. 2004) 357 F.3d 871.
    Park v. California, (9th Cir. 2000) 202 F.3d 1146, 1151-1152.

MID POINT-END NOTES

23. Lubben v. Selective Service System, 453 F.2d 645, 649 (1st Cir. 1972).
24. United States v. Cotton, 536 U.S. 625, 630.

MID POINT-END NOTES CONTINUED

25. United States Constitution, Fourteenth Amendment.

26. California Constitution, Article I, § 7 Subd.(a).

27. Harris v. Reed, 489 U.S. 255, 258 (1989).

28. Beck v. Alabama, 477 U.S. 6625, 6630 N.6 (1980).

29. Coleman v. Thompson, (1991) 501 U.S. 722, 735.

30. Murray v. Carrier, 477 U.S. 478, 500 (1986).

CONCLUSION-END NOTES

31. Basso v. Utah Power & Light Co., 495 F.2d 906, 910 (1974).

32. Old Wayne Mut. L. Assoc. v. McDonnough, 204 U.S. 8, 27 S. Ct. 236 (1907).

33. Stuck v. Medical Examiners, 94 Cal.2d 751; 211 P.2d 389.

34. Rosemond v. Lambert, 469 F.2d 416.

35. Joyce v. U.S., 474 2d 215.

36. Eggl v. Fleetguard Inc., 1998 ND 583 N.W.2d 812.
Marquette Corp. v. Priester, 234 F.Supp. 799 (E.D.S.C. 1964).

37. Fisher v. Amaraneni, 565 SO.2d 84, 87 (Ala. 1990).

38. United States Constitution, Fourteenth Amendment § 1.

39. California Constitution, Article I § 7 Subd.(a).

40. Calderon v. United States District Court, (Bealer) 128 F.3d 1283, 1288-89.

41. Rules Governing, Section 2254 Cases, Annotations.

42. People v. Viray, (2005) 134 Cal.App.4th 1186, 1201.

43. (Citing Serna v. Superior Court, 40 Cal.3d 239, 257 (1985). In Re Bush, United States District Court, Central District of California, Case No. cv-391 (DSF(JC)) Page 5, Lines 21-24, Document 13 Filed March 7, 2019, Page ID# 209.

44. Ruhrgas v. Marathon Oil, 526 U.S. 574 (1999).

45. People v. Talle, (1952) 111 Cal.App.2d 659, 678.

46. Jolly v. Coughlin, 76 F.3d 468, 482.

47. HOLY BIBLE, Proverbs 10:9 (NIV).

48. HOLY BIBLE, Proverbs 10:9 (NKJV).