No. 19-8009

In The
Supreme Court of the United States

HOOMAN ASHKAN PANAH,

Petitioner,

v.

RON BROOMFIELD, ACTING WARDEN,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF AMICUS CURIAE OF THE EMBASSY OF PAKISTAN, IRANIAN INTERESTS SECTION IN SUPPORT OF PETITIONER HOOMAN ASHKAN PANAH

SAEID B. AMINI
THE LAW OFFICES OF SAEID B. AMINI
730 24th Street, NW
Suite One
Washington, DC 20037
(202) 306-9444
Sbajd98@yahoo.com

Counsel of Record for Amicus Curiae

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

Page

RULES

OTHER AUTHORITIES

TABLE OF AUTHORITIES – Continued

INTEREST OF AMICUS CURIAE[1]

Pursuant to Supreme Court Rule 37.3, Amicus Curiae, The Embassy of Pakistan, the Iranian Interests Section in Washington, D.C. ("IIS" or "Amicus") respectfully submits this brief in support of the Petitioner, Hooman Ashkan Panah, an Iranian National who has been convicted of a capital crime in a state court in California without having an opportunity to benefit from the services that could have been available to him under the Vienna Convention on Consular Relations treaty.

By signing and ratifying the Vienna Convention on Consular Relations ("VCCR"), opened for signature Apr. 24, 1963, 21 U.S.T. 77, the Governments of IRAN and the United States made commitments to each other, to their other treaty partners, and to the rule of law. Specifically, the United States promised that detained Iranian nationals would be promptly notified of their right to seek consular assistance. This obligation remained unchanged even after the formal diplomatic ties between the two countries were severed in 1983. At that time the Iranian Interests Section ("IIS") in Washington, D.C. was established as a consular office for over 1.5 million Iranian nationals/ex-patriates

---

[1] Pursuant to Rule 37.6, amicus curiae certifies that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amicus, has made a monetary contribution to the preparation or submission of this brief. The parties have filed letters consenting to the filing of this brief with the Clerk of the Court. All parties have been timely notified of the filing of this brief.

living in the United States and remains active to date. Presently and during the pendency of the present case in the lower courts, IIS was under the diplomatic auspice of the Pakistan Embassy in Washington, D.C.

The United States Government has vigorously used this treaty all over the world when its nationals have been arrested in other counties. It is generally understood that for foreign nationals this notice is fundamental and has the same effect as the Miranda Right in regards to right to counsel. Any effort to marginalize this very important treaty could have chilling effects on the consular relationship between the nations and meaningful access to legal representation by a terrified defendant in an unfamiliar and possibly hostile environment when a consular office is the only support that he may have. In order to maintain international peace and security, and to promote friendly relations among the nations, full compliance by all the nations, including the United States, that itself is the leader in demanding full compliance from other nations, is required. Furthermore, it has been well established that the terms of The Vienna Convention on Consular Relations is applied even in the absence of a full diplomatic relationship between two signatory countries or even during apparent hostility. This important and vital right has been violated for this petitioner. No notice was given. Furthermore, a young and helpless Iranian national was prosecuted and sentenced to death by a prosecutor, Mr. Patrick Couwenberg, who admitted himself as being a "Pathological Liar," removed from the bench that he was appointed shortly after

prosecuting the case against the petitioner by offering uncorroborated DNA evidence. Despite the fact that Mr. Couwenberg was removed from the bench for lying and misconduct and subsequently lost his California bar admission permanently, the State of California failed to review the evidence presented by the lying prosecutor. This would NOT have happened if the United States Government had informed IIS in a timely manner, as it was required under VCCR.

SUMMARY OF ARGUMENT

International treaties constitute federal law, and, as such, are binding on the United States as a whole, and preempt any conflicting state laws through the Constitution's Supremacy Clause. The Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77 ("Vienna Convention" or "VCCR") is a treaty, duly ratified by the United States Senate. Article 36 of the Vienna Convention guarantees to the citizens of all signatory nations effective notice and access to consular services if they are arrested in another signatory nation.

In the present case, the petitioner's rights were seriously violated by the United States Government and the State of California. Specifically, it is well documented that the petitioner was unable to benefit from the VCCR treaty as he was not informed by the local and national law enforcement agencies about his rights under VCCR for several very crucial years after

his arrest, nor was the IIS office in Washington informed about the petitioner's arrest and capital murder charge against the petitioner until 2002. In fact, it was the IIS consulate office in Washington D.C. that first contacted the U.S. State Department about Mr. Ashkan Panah case (Exhibit "A"). Once the Amicus learned about the Petitioner in 2001, it was already too late. Had the petitioner and/or IIS in Washington, D.C. been informed immediately after the petitioner's arrest in 1993, the final outcome could have been very different for Mr. Ashkan Panah.

Furthermore, if IIS had been made aware of charges against the petitioner in a timely manner, as was required by VCCR, IIS would have made sure that Mr. Ashkan Panah had a competent defense counsel. Unfortunately, the injustice against the petitioner did not end here. Mr. Ashkan Panah was prosecuted by an admitted "pathological liar," Mr. Patrick Couwenberg, who suppressed DNA evidence during the trial, and introduced false testimony by experts. Once all these serious problems surfaced in 2001, when Mr. Couwenberg was removed from the bench for which he was appointed shortly after prosecuting the case against the petitioner, the State of California and Los Angeles County failed to re-open or at least review the evidence presented at the petitioner's trial. Here, the United States government, the State of California and the legal system failed Mr. Ashkan Panah, again and again by failing to inform IIS of the petitioner's arrest, failed to inform the petitioner about his rights under VCCR, purposefully withhold the exonerating evidence from

petitioner, failed to inform the jury about the exonerating DNA evidence that were available prior to the prosecutor prior to trial, and failed to reverse the conviction, or at a very least, to review the new DNA and pathological evidence that would have resulted in colorable evidence of innocence.

If justice is the ultimate goal of the legal system, then the petitioner should be given another opportunity to present all his evidence and witnesses that he was unable to present during his first trial due to circumstances beyond his control.

ARGUMENT

I. The State of California and Federal Authorities failed to inform Mr. Ashkan Panah, who at the time was only 22 years old, about his rights under VCCR for several years after his arrest and conviction.[2]

By ratifying the Vienna Convention, the United States committed itself to the consular notification and access provisions of Article 36. That commitment is binding federal law which, under the Supremacy Clause of the United States Constitution, takes precedence over any contrary state law. U.S. CONST. art. VI,

[2] Petitioner's right under the Vienna Convention was raised as early as 1999. It was part of the court's record in the case of *Hooman Ashkan Panah v. Robert L. Ayers, Jr.,* U.S. District Court for the Central District of California, Western Division, Case No. CV 05-07606-RGK, Dkt# 103-2, Exhibits 48-59.

cl. 2 ("all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land; and judges in every State shall be bound thereby."); *United States v. Belmont*, 301 U.S. 324, 331 (1937).

In the present case, the record is very clear. The Petitioner, Mr. Ashkan Panah was an Iranian immigrant in the United States. At the time he had difficulty speaking and reading English. Mr. Ashkan Panah was 22 years old when he was arrested by local police near his girlfriend's apartment in California on or about November 21, 1993. He was tried by the Los Angeles County prosecutor, Mr. Patrick Couwenberg. Petitioner was convicted on or about December 19, 1994, and sentenced to Death on March 6, 1995. The petitioner has been on "Death Row" in San Quentin prison since. From the time of his arrest on November 21, 1993, to March 6, 1995, the petitioner was NEVER informed about his rights under VCCR nor given an opportunity to speak with anyone at the Iranian Interests Section in Washington, D.C. Had Mr. Ashkan Panah been informed of his consular rights from very beginning, the outcome of his trial may have been very different. Once the petitioner learned about his VCCR rights, he included this in his appeals and Habeas Corpus petitions.

Clearly VCCR is intended to apply in circumstances exactly like this situation. Here the violation of Mr. Ashkan Panah's VCCR rights prejudiced his trial. By failing to inform the petitioner in a timely manner about his right to contact the consulate office in Washington, D.C. closed many windows of opportunity for him. If it had been involved from the

beginning, the consulate office could have assisted Mr. Ashkan Panah to find competent attorneys and assisted his attorney to gather the necessary evidence and witnesses in Iran. Unfortunately the consulate office was not aware of Mr. Ashkan Panah's arrest for almost 9 years after his arrest (Exhibit "A").

Once the Amicus became aware of this case, it visited Mr. Ashkan Panah in the prison several time and offered assistance to Mr. Ashkan Panah's defense. Specifically, staring with 2004, Amicus spent over $45,000, for re-testing of DNA and pathology on some of the evidence that were still available. The new tests revealed different results of than those presented by the prosecutor during the trial. As more fully provided in Petitioner's filings, the additional analyses, contradicted many of the trial testimonies provided by the experts hired by the prosecutor, including but not limited to the time of death, cause of death, and many of the DNA results were incorrectly interpreted by the expert witnesses during the trial with any defense challenges. Unfortunately, at the time of trial, Mr. Ashkan Panah, did not have the necessary means to challenge the evidence presented against him. Petitioner lacked financial means, suffered from ineffective assistance of his court-appointed defense counsel, and the prosecutor, withheld the exonerating DNA and other evidence from the defense and jury. If IIS was timely informed of this important case, it had the means, as it did later, to assist Mr. Ashkan Panah in his defense.

Unfortunately, right from the get go, all the circumstances beyond Mr. Ashkan Panah's control were

stacked up against him and effected his defense and ultimately the outcome of his trial. Mr. Ashkan Panah deserves another opportunity to present all his evidence and witnesses in order to defend himself.

II. The State of California and Federal Authorities violated the VCCR agreement by failing to inform the Iranian Interests Section in Washington, D.C. about the arrest of Mr. Hooman Ashkan Panah, an Iranian national until 2002.

Article 36 of the Vienna Convention on Consular Relations (Article 36) provides that individuals detained in a foreign country must be notified of their "right" to seek assistance of consul from their country of origin.[3] Article 36(1) of the VCCR sets forth three "rights" aimed at ensuring consular assistance:

> 1) detained foreign nationals are entitled to "freedom with respect to communication with and access to consular officers of the sending State";[4]
>
> 2) "[a]ny communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay";[5] and

---

[3] 1. Vienna Convention on Consular Relations art. 36, Apr. 24, 1963, 21 U.S.T. 77, 596.

2. U.N.T.S. 261 [hereinafter VCCR].

[4] VCCR, *supra* note 1, art. 36(1)(a).

[5] *Id.* art. 36(1)(b).

> 3) "[c]onsular officers shall have the right to visit a national of a sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation."[6]

In addition, Article 36(1) provides that detaining authorities must notify foreign nationals "without delay of [their Article 36(1)] rights. . . ."[7]

If notified in a timely manner consular assistance can drastically change playing field for an accused that has been charged for a crime in an unfamiliar and often a hostile environment. The difficulties can range from a simple language barrier to cultural differences to outright hostility. As a result, a notice to a consular office about an identify and place of its detained foreign nationals immediately after the incarceration as provided in VCCR can be a "cultural bridge," which allows foreign nationals to "navigate the waters of the criminal justice system and . . . help[s] them secure their rights within that system."[8] Consular officials can be instrumental from explaining the substantive and procedural rights of defendant to helping in finding interpreter translators to locating evidence and witnesses in the home country. In many cases for detained foreign nationals, such consular assistance

---

[6] *Id.* art. 36(1)(c).

[7] *Id.* art. 36(1)(b).

[8] Brief for Amici Curiae Republic of Honduras and Other Foreign Sovereigns in Support of Petitioners at 8, *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669 (No. 04-10566, 05-51), 2005 WL 3597807.

could fundamentally change the nature and outcome of a case.

It should be noted that the rights under consular notification and access provisions of Article 36 remain effective even during the hostility between two signatory nations. In fact it would be more critical for an accused to have access to his/her consul office when there are diplomatic problems between the nations. In the present case, Mr. Ashkan Panah was arrested in November of 1993, he was not informed of his rights under VCCR nor was the consul office notified about his incarceration until 2002 (Exhibit "A").

As pointed out *supra*, IIS was only notified of the petitioner's arrest, conviction and death sentence in 2002 (more 7 years after petitioner was sentenced to death (Exhibit "A" – letter from the U.S. State Department). Unfortunately, this was too little and too late and the fact is that Mr. Ashkan Panah was deprived of these significant rights under the international laws.

III. The *deteriorating* political relations between the governments of IRAN and the United States has adversely affected the Petitioner Mr. Ashkan Panah's ability to offer an effective defense or mitigating evidence during his trial and sentencing.

In the present case it is undisputed that Mr. Ashkan Panah was unaware of his rights under VCCR and that IIS (Iran consular office in Washington D.C.) was not independently notified by the U.S. or State

authorities about Mr. Ashkan Panah's arrest for at least 9 years after his arrest. Because of this lack of knowledge, the consular office was unable to offer the necessary assistance to Mr. Ashkan Panah or meet with him until Mr. Ashkan Panah's mother notified IIS about her son's conviction and death penalty. As stated above, this was a clear violation of VCCR. Unfortunately by the time IIS became aware of Mr. Ashkan Panah's situation, the diplomatic relationship between the United States and Iran started deteriorating rapidly. The deteriorating relationship, and other restrictions imposed after the great tragedy of 9/11, have significantly reduced and severely limited the IIS's ability in Washington, D.C. to offer any meaningful assistance to Mr. Ashkan Panah. While, IIS founded the re-testing of some of the trial evidence for DNA markers that are reported in the petitioner's brief filled on or about November 7, 2019 with the 9th Circuit (Dkt#129), IIS could not offer more assistance because of the unfortunate political environment between two countries. Unfortunately this political climate impacted Mr. Ashkan Panah's conviction and imposition of the death penalty despite the new DNA evidence exonerating Mr. Ashkan Panah.

IIS submits to this Honorable Court that the results in this case would have been very different if Mr. Ashkan Panah was a citizen of another country. His arrest, conviction and death sentence, were more likely than not, due to his Iranian nationality.

IV. The State of California failed to review the capital cases, prosecuted by admittedly a "Pathological Liar," Mr. Patrick Couwenberg, who was removed from the bench in 2001 because of misconduct and falsification and permanently disbarred from the California Bar in 2002, only 6 years after he prosecuted the murder charge against Mr. Ashkan Panah.

In 1994-1995, Mr. Patrick Couwenberg was the prosecutor in the case of *People v. Panah* (case No. BA090702) in Los Angeles County. Shortly thereafter, Mr. Patrick Couwenberg was appointed by then-Gov. Pete Wilson to serve as a Superior Court judge at the Norwalk courthouse (Los Angeles County). Mr. Couwenberg became a judge on or about April 24, 1997. After the news about his dishonesty was surfaced, the State of California Commission on Judicial Performance, investigated Mr. Couwenberg. After completion of their investigation, on or about August 15, 2001, Judge Patrick Couwenberg, was removed from the bench for willful and prejudicial misconduct, noting that he admitted perjuring himself during the state investigation.[9] During the investigation, Mr. Couwenberg admitted that he was a "pathological liar" (Exhibit "B").

---

[9] These links are last visited on March 21, 2020: https://cjp.ca.gov/public-decisions/couwenberg/; https://www.latimes.com/archives/la-xpm-2001-aug-16-me-34920-story.html.

He becomes the seventh Los Angeles Superior Court judge – and the 16th statewide – to be removed in the commission's 40-year history.[10] He was disbarred by California bar association permanently on or about January 16, 2002.[11]

Despite the fact that Mr. Couwenberg admitted that he was a pathological liar and his failure to produce exonerating DNA evidence as more fully provided in the petitioner's brief with this Court, the State of California failed to re-open the case, or review the exonerating evidence that the prosecutor, Mr. Couwenberg, failed to disclose in Mr. Ashkan Panah's trial in 1994-1995. At the very least a new fact finder should have been given an opportunity to review the all evidence, including the new DNA and exonerating evidence that withheld from Mr. Ashkan Panah, jury. After over 26 years of imprisonment in San Quentin, Mr. Ashkan Panah deserves a fresh look/review of the incomplete and one-sided evidence presented by the prosecutor in petitioner's trial and sentencing during 1994-1995.

---

[10] http://www.metnews.com/articles/couw0816.htm; (last visited on March 21, 2020).

[11] http://members.calbar.ca.gov/fal/Licensee/Detail/70507 (last visited on March 21, 2020).

V. The State of California failed to re-open Mr. Ashkan Panah's case after it became aware of the exonerating DNA evidence that was deliberately withheld from the jury by the trial court and prosecutor, Mr. Patrick Couwenberg.

Becoming a judge after serving as prosecuting attorney is a common occurrence in the United States legal systems. In State legal system, often, prosecutors are appointed to bench shortly after the successful prosecution of notable cases. Here, the fact, the lead prosecutor of Petitioner's case, Mr. Couwenberg, was appointed to bench within two years of prosecuting this matter and he knowingly and intentionally lied to the *Judicial Selection Advisory Committees* (JSACs) about his education and service.[12] Also, as more fully provided in the Petitioner's brief, Mr. Couwenberg withheld exonerating evidence from the jury. Reviewing the facts of this in light of the large number of releases from the death row inmate population, and in the pursuit of justice, the Petitioner deserves a chance of second trial.

It is not uncommon to hear a death row defendant was released after decades of imprisonment due to a lack of evidence. As of March 21, 2020, the Innocence Database from Death Penalty Information Center shows 167 exonerations of prisoners on death row in

[12] See, e.g., Exhibit "B".

the United States since 1973.[13] In 2019 alone, three death row inmates were released.[14] Behind most of these false convictions stood dishonest or racist law enforcement agency and prosecuting attorneys who are willing to bend the rules for personal gains (getting appointed to bench) or satisfaction. Going over the three released death row inmates in 2019, we note that,

1. *Mr. Paul Browning*. Mr. Browning (63) was convicted in 1986 in the State of Nevada. He was released after 33 years on Nevada's death row for a 1985 killing of a Las Vegas jeweler that he has consistently maintained he did not commit.[15] The U.S. Court of Appeals for the Ninth Circuit overturned Mr. Browning's conviction in 2017 after finding that "a mixture of disturbing prosecutorial misconduct and woefully inadequate assistance of counsel" led to "extreme malfunctions" at his trial. *Browning v. Baker*, 875 F.3d 444 (9th Cir. 2017) (emphasis added).

2. *Clifford Williams*. Mr. Williams (73) was convicted in 1976 in the State of Florida. Mr. Williams was released after 43 years on Florida's death row for the May 2, 1976, killing of Jeanette Williams in her apartment in the New Town neighborhood of Jacksonville,

---

[13] https://deathpenaltyinfo.org/policy-issues/innocence-database (last accessed on March 21, 2020).

[14]
- Paul Browning, Nevada. Convicted 1986.
- Clifford Williams, Florida. Convicted 1976.[73][74].
- Charles Finch, North Carolina. Convicted 1976.[75].

[15] https://eji.org/news/nevada-court-orders-mans-release-death-row-due-prosecutorial-misconduct-and-inadequate-defense/ (last accessed on March 21, 2020).

Florida.[16] While the first jury trial ended in mistrial, the State of Florida re-tried and convicted of Mr. Williams after a quick two-day trial during which none of the 5 alibi witnesses were called to testify. The innocence of Mr. Williams was only uncovered by Conviction Integrity Unit in the State Attorney's Office for the Fourth Judicial Circuit which cited racial bias by police, prosecutor failure to evaluate the case, and for ineffective assistant of counsel for the false conviction.

3. *Charles Ray Finch*. Mr. Finch (81) was convicted in 1973 in the State of North Carolina. Mr. Finch was released after 46 years in prison for killing of a gas station owner who was killed in his store during a robbery attempt; Mr. Finch has always maintained his innocence.[17] Over the years, Mr. Finch had filed motions for relief, both pro se and through counsel, and been denied. In December 2015, a habeas petition filed by the Legal Clinic at Duke University with the U.S. District Court for the Eastern District of North Carolina (case No. 5:15-hc-02302, *Finch v. McKoy*). The petition was again denied. *Id.* The Fourth Circuit Court of Appeals reversed the district court's decision in January.

---

[16] https://edition.cnn.com/2019/03/29/us/florida-wrongful-imprisonment-42-years-murder/index.html (last accessed on March 21, 2020); See also https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5533 (last accessed on March 21, 2020).

[17] https://eji.org/news/charles-ray-finch-exonerated-43-years-after-being-sentenced-to-death/ (last accessed on March 21, 2020); See also https://law.duke.edu/news/wrongful-convictions-clinic-secures-release-charles-ray-finch-after-43-years-prison/ (last accessed on March 21, 2020).

Considering evidence and testimony from the 1976 trial, the three-judge panel found issues including an "impermissibly suggestive" police line-up, ballistic evidence that failed to connect a shotgun shell from Finch's car with the crime scene, and significant credibility problems with the state's only eyewitness, according to the opinion. In addition, the opinion noted that new evidence also undermined the credibility of the Wilson County chief deputy, Tony Owens. Writing for the panel, Fourth Circuit Chief Judge Roger L. Gregory said, "Finch has overcome the exacting standard for actual innocence through sufficiently alleging and providing new evidence of a constitutional violation and through demonstrating that the totality of the evidence, both old and new, would likely fail to convince any reasonable juror of his guilt beyond a reasonable doubt." *Finch v. McKoy*, 914 F.3d 292 (4th Cir. 2019)

In the present case, petitioner has always maintained his innocence. At the time of his arrest he was a 20 year old new immigrant with difficulty speaking and understanding English. The heinous crime involved the rape and murder of an 8-year innocent girl that shook the city and neighborhood. Perhaps the law enforcement agency wanted to get quick closure to the crime. Perhaps the petitioner, a young Iranian National, speaking little English, was in the wrong place at the wrong time, and ended up being a sacrificial lamb. While we may not know this for sure, what we know for sure is that the petitioner was not informed of his rights under the international law, and at the same time, the Consulate post was not independently

informed by the state and federal government authorities about petitioner's arrest. Furthermore, petitioner suffered from an ineffective assistant of counsel,[18] the case was prosecuted by someone who admitted for being a "pathological liar," and the prosecution failed to disclose the exonerating materials facts including the DNA evidence. The fact is, after known all these serious defects and issues, the State of California failed to take a single step to investigate the matter or allowed an independent fact finder such as "the Conviction Integrity Unit," in the State of Florida, to review the facts in this case that are more fully pointed out in the petitioner's brief. Just like other 167 wrongfully convicted and death row inmates in the United States, Mr. Ashkan Panah deserves a second chance which this Honorable Court can grant in order to prevent the execution of an innocent person.

VI. The lower Court's refusal to entertain Petitioner's colorable claim of factual innocence, as more fully provided in Dkts #129 and 130, resulted in a fundamental miscarriage of justice.

This case has been laced with serious flaws and defects throughout its 27-year history. As pointed out

[18] According to the record, as Petitioner's trial began on December 5, 1994, the lead defense counsel, Mr. Sheahen notified that, the second attorney, Shafi-Nia, was unable to serve as second counsel; but he did not seek a continuance. So, the jury selection was started by one counsel. While, the court appointed new second counsel to replace Shafi-Nia, but second counsel was required to familiarize himself with the case during trial.

Supra, Petitioner's rights under VCCR was violated, his right for competent defense counsel has been was disregarded. The case was investigated by a racist Los Angeles police department, prosecuted by a pathological liar, the jury was not informed of the exonerating evidence and the courts failed to review all the facts when it was presented with.[19]

While, Petitioner maintained his innocence for 27 years, unfortunately, all his appeals and Habeas Corpus petitions were denied. To prepare this brief, amicus reviewed the Petitioner's recent case with the U.S. 9th Circuit of Appeals. It appears that the Court declined (Dkt#131) to consider the supplemented filings by Petitioner (Dkt#129) because it was filed *pro se*, a possible procedural defect. Nevertheless, the filing included very detailed (over 100 pages) colorable claims of factual innocence. The docket shows that Petitioner's motion "to take judicial notice filed," filed on November 9, 2019 (Dkt#129), appears to be in response to Courts earlier rulings of August 21, 2019 (Dkts #121 & 122). In this motion (Dkt#129), Petitioner provided the Court with over 100 pages of detailed exhibits which included 17 evidence toward showing of his innocence. Unfortunately the court below failed to review these documents before denying the appeal.

The refusal to entertain over 100 pages of evidence of innocence by the lower court resulted in a

[19] For example, in the recent appeals to the U.S. 9th Circuit Court of Appeals, the court failed to consider the evidence of incidence presented by Petitioner (Dkts #129 and 130 under Case No. 13-99010).

fundamental miscarriage of justice. *Sawyer v. Whitley*, 505 U.S. 333 (1992). This evidence included new reliable evidence of actual innocence that was not considered by the lower court because petitioner filed it *pro se*. *Abdus-Samad v. Bell*, 420 F.3d 614 (6th Cir. 2005). As pointed out in the petitioner's brief and Dkt#129, multiple constitutional violations have probably resulted in Mr. Ashkan Panah's conviction which requires the reversal of lower's court decision. *Murray v. Carrier*, 477 U.S. 478, at 496 (1986).

This Court established an exception for fundamental miscarriages of justice in *Carrier*, 477 U.S., at 495; *Kuhlmann v. Wilson*, 477 U.S. 436 (1986); *Smith v. Murray*, 477 U.S. 527 (1986). Under these cases, a petitioner must show that the constitutional error "probably" resulted in the conviction of one who was actually innocent. While this exception is rare and applied in the "extraordinary case," as more fully discussed above and in the Petitioner's brief, this is one of those extraordinary cases. It helped in release of 167 death row inmates already.

CONCLUSION

It is unfortunate that Mr. Ashkan Panah, himself became a victim of circumstances that he did not cause nor have control over. First he was not informed about his VCCR rights, then the consular office was not notified about his arrest, he was tried for capital murder during the lowest point of diplomatic relationship

between two great nations, a subsequently a disgraced, dishonest and disbarred attorney prosecuted the case and the state of California failed to review the evidence against the petitioner after the scandal about prosecutor was surfaced and new DNA results contracted the evidence presented by the prosecution.

Clearly the violation of Mr. Ashkan Panah's VCCR rights and his inability to use the service of consul office and compel appearance by all his witnesses and his inability to present all the evidence have seriously prejudiced his trial. If Mr. Ashkan Panah had been told of his VCCR rights at the very beginning, while there was a good cooperation between the two counties, in all likelihood today we would have had a different outcome.

Therefore, and for the reasons set forth above, and consistent with the spirit of VCCR, IIS respectively submits that the Court should reverse the decision of the 9th Circuit Court of Appeals.

Respectfully submitted,

SAEID B. AMINI
THE LAW OFFICES OF
SAEID B. AMINI
730 24th Street, NW
Suite One
Washington, DC 20037
(202) 306-9444
Sbajd98@yahoo.com

Counsel of Record
for Amicus Curiae