

1 Jeff Adachi
Public Defender
2 Teresa Caffese
Chief Attorney
3 BY: Hadi Razzaq (SBN 219534)
Deputy Public Defender
4 555 Seventh Street
San Francisco, California 94103
5 (415) 575-8818; (415) 553-1671

6 Attorneys for Rigoberto Valle

7 **Superior Court of the State of California**
8 **City and County of San Francisco**

9 In re Rigoberto Valle

Writ No.

10 Petitioner,

11 **on Habeas Corpus.**

12 **Petition for Writ of Habeas Corpus**

13 To the Honorable Charles Haines, Presiding in Department 22 of the San Francisco
14 Superior Court, to the District Attorney of San Francisco, and to the Sheriff of the City
and County of San Francisco:

15 Rigoberto Valle petitions for a writ of habeas corpus and by his verified petition
16 alleges as follows:

17 **Valle was charged with a drug case in which the drugs were tested by Deborah**
18 **Madden.**

- 19 1. Petitioner was a defendant in felony court number 2422006/209184.
20 2. On September 25, 2009, in Department 29 of the San Francisco Superior Court,
21 petitioner was convicted by jury of the following felony offense: sales of cocaine
22 (Health & Safety Code section 11352(a)).¹ The narcotics in this case were tested
23 by criminalist Deborah Madden.²

24 **Valle was sentenced to one year county jail and probation.**

- 25 3. On December 3, 2009, petitioner was sentenced as follows: 5 years states prison

26 _____
27 ¹ Exhibit A - CMS printout in Court Number 2422006/209184.

28 ² Exhibit O - Narcotics Analysis form S.F.P.D.

1 execution of sentence suspended, five years of formal probation, and 1 year in
2 the county jail with 18 days credit (161 days waived), among other conditions.³

3 **Valle is currently in custody in the San Francisco County Jail.**

- 4 4. Petitioner is unlawfully restrained of his liberty since he is currently in custody
5 under jail # 2422006, in San Francisco County Jail # 2, 425 Seventh Street, San
6 Francisco, CA 94103 and in the custody of the San Francisco Sheriff's
7 Department. In addition, he is currently on probation. If petitioner's probation is
8 revoked, he faces up to five years in state prison.⁴

9 **Deborah Madden absconded with drug samples from the crime lab.**

- 10 5. From March 10 through 18, 2010, petitioner's counsel read newspaper accounts
11 concerning a SFPD drug test technician named Deborah J. Madden who
12 allegedly absconded with certain drug samples during her work at the lab.
13 Madden left her job in December 2009 and a lab audit conducted during the
14 same month discovered the tampering with samples. "That review was triggered
15 when other technicians suspected someone had been stealing evidence and
16 supervisor noted apparent tampering with the packaging of drug evidence, San
17 Francisco Police Chief George Gascon said at a news conference" on March 9,
18 2010.⁵ Specifically, the "investigation linked [Madden] to missing drugs in at
19 least six cases in the latter part of 2009."⁶ Police officials said that Madden
20

21 ³ Exhibit A - CMS printout.

22 ⁴ The statutory purpose of the writ is to inquire into the lawfulness of a person's
23 imprisonment or other restraint of his or her liberty. Penal Code section 1473. The requirement of
24 actual physical custody has long been discarded. *In re Petersen* (1958) 51 Cal.2d 177, 181. "The
25 thrust of these cases is that a person is in custody constructively if he may later lose his liberty and
be eventually incarcerated." *In re Wessley W.* (1981) 125 Cal.App.3d 240, 246.

26 ⁵ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician
accused of skimming.

27 ⁶ *Id.*

1 might have been summoned to testify in some of these six cases and may have
2 perjured herself about the evidence.⁷ According to authorities, “Madden was
3 supposed to vouch for the weight and purity of seized drugs but instead used the
4 cocaine.”⁸ The tampering, theft and usage of drugs, as well as the alleged
5 perjury, would be a basis for impeachment of a witness at trial in terms of
6 credibility. In addition, it is reasonably probable that such evidence would
7 undermine confidence in the jury verdict.

8 **Madden charges that crime lab is sloppy and technicians lost and mishandled
9 evidence.**

- 10 6. Newspaper accounts indicate that Madden was interviewed as part of an
11 investigation into the missing drugs where she “leveled charges of her own about
12 the lack of control over drug evidence. One official said Madden called the
13 drug-testing process at the lab ‘sloppy’.”⁹ Madden also indicated that lab
14 technicians “consistently lost or mishandled evidence.”¹⁰ These statements call
15 into question the integrity and reliability of all crime lab results.

16 **Madden admits to consuming cocaine from drug evidence.**

- 17 7. According to news reports, in her two-hour statement to police, Madden told
18 police that she began to use cocaine in October of 2009 and admitted to
19 consuming cocaine from five samples of drug evidence.¹¹

20 **S.F. Crime lab audit reveals substandard procedures.**

21
22 ⁷ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician
23 accused of skimming.

24 ⁸ *Id.*

25 ⁹ *Id.*

26 ¹⁰ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to
27 investigate lab tech.

28 ¹¹ *Id.*

1 8. Newspaper accounts also indicate that “police released an audit by the American
2 Society of Crime Laboratory Directors that shows the San Francisco lab does not
3 have a secure chain of custody for evidence, fails to keep detailed case records
4 and does not meet standards of cleanliness. The audit found that the lab is
5 routinely underfunded and understaffed and has to rely on overtime to fulfill its
6 mission.”¹²

7 **Madden’s sister finds lab vial of cocaine and reports to police lab.**

8 9. Newspaper accounts indicate that Madden’s sister informed the crime lab on
9 December 16, 2009 that she found what appeared to be a lab vial of cocaine at
10 Madden’s home in San Mateo. Despite informing the crime lab in December of
11 last year, the San Francisco police took two months to launch a criminal probe
12 into Madden’s suspected theft of drug evidence.¹³ In addition, newspaper
13 accounts indicate that Madden has been in treatment recently for drug and
14 alcohol use.¹⁴

15 **Madden was arrested, tried and convicted of domestic violence in San Mateo County.**

16 10. Newspaper accounts also indicate that this long-time employee suffered a
17 domestic violence conviction,¹⁵ which would be a basis for impeachment of a
18 witness at trial in terms of credibility.

19 11. Madden was actually arrested on October 2, 2007 for domestic violence and
20

21 ¹² Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician
22 accused of skimming; Exhibit J - ASCLD/LAB Inspection Report - San Francisco Police
23 Department Criminalistics Laboratory (Inspected: November 17-20, 2009).

24 ¹³ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to
25 investigate lab tech.; Exhibit G - San Francisco Chronicle Article - March 15, 2010 - SF Police
26 waited 2 months before drug lab probe.

27 ¹⁴ Exhibit E - San Francisco Chronicle Article - March 10, 2010 - Crime lab fallout: Drug
28 defendants go free.

¹⁵ *Id.*

1 assault charges.¹⁶ Alcohol was involved in this incident of domestic violence.
2 Madden testified in her defense and the Director of the San Francisco Crime Lab,
3 Jim Mudge, testified as a character witness. On February 19, 2008, during the
4 trial, the court granted the San Mateo prosecutor's request to explore the internal
5 investigation being conducted by Madden's employer at that time on cross-
6 examination of Mudge or during direct examination of a rebuttal witness.¹⁷
7 Madden was convicted of misdemeanor domestic violence and vandalism
8 offenses on February 20, 2008.¹⁸

- 9 12. Madden was sentenced on May 9, 2008 as follows: Imposition of sentence
10 suspended, 3 years supervised probation, 30 days county jail, 104 hours of
11 domestic violence counseling, abstain from the use and possession of alcoholic
12 beverages, submit to alcohol tests when directed by probation officer, participate
13 in any education, rehabilitation or treatment program as directed by probation
14 officer, and not to possess any weapons, among other conditions.¹⁹

15 **Many cases are dismissed as a result of Madden's conduct.**

- 16 13. As a consequence of Madden's apparent misfeasance, as of March 18, 2010, over
17 50 drug cases involving defendants represented by the Public Defender's Office
18 have been dismissed and numerous individuals incarcerated because of those
19 cases have been released from custody. Per a news article released on March 18,
20 2010, over 180 drug cases in total have been dropped by the prosecution as a
21
22
23

24 ¹⁶ Exhibit B - Copy of police incident report of Deborah Madden's arrest on October 2, 2007.

25 ¹⁷ Exhibit K - Declaration of Petitioner's counsel.

26 ¹⁸ Exhibit C - Criminal Case Docket - Deborah Jean Madden (Front page only).

27 ¹⁹ Exhibit K - Declaration of Petitioner's counsel.
28

1 result of Madden's actions.²⁰

2 14. Madden was arrested on March 3, 2010 for weapons charges after a search of her
3 home pursuant to a warrant.²¹ This arrest constitutes another criminal offense
4 and a violation of the terms of her domestic violence probation.

5 **Valle challenged the reliability of the drug test results.**

6 15. At petitioner's preliminary hearing on June 19, 2009, the prosecution introduced
7 the alleged narcotics sold by Valle through a lab report that contained a
8 declaration by Madden under Evidence Code section 1280 which requires that
9 the prosecution demonstrate the document's trustworthiness. Petitioner's trial
10 counsel filed a Penal Code section 995 motion²² arguing there was no
11 independent evidence of trustworthiness as required under Evidence Code
12 section 1280, which was denied on September 4, 2009. The undisclosed
13 impeachment and exculpatory information seriously undermines Madden's
14 trustworthiness.

15 **Madden testifies for the prosecution at Valle's jury trial.**

16 15. In petitioner's jury trial, this same lab technician testified for the prosecution and
17 proffered evidence that was used to convict him.

18 **Valle moved for discovery on several occasions.**

19 16. Prior to trial, petitioner's trial counsel made an informal discovery request
20 specifically asking for *Engstrom/Wheeler* on all prosecution witnesses.²³ Despite
21 this request, petitioner's trial counsel was never provided with any

23 ²⁰ Exhibit H - San Francisco Chronicle Article - March 18, 2010 - S.F. police hope officers
24 can do drug testing.

25 ²¹ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician
26 accused of skimming.

27 ²² Exhibit N - Copy of Valle's Penal Code section 995 motion.

28 ²³ Exhibit I - Informal Discovery Request filed on June 10, 2009.

1 *Engstrom/Wheeler* on Madden. In addition, through this request, petitioner’s
2 counsel also requested any exculpatory evidence in the possession of any police
3 department, the District Attorney, or any other person or agency and available to
4 the prosecution.²⁴ The latter request would include any information that Madden
5 had regarding the “sloppy” lab work and the “lost” and “mishandled” evidence at
6 the time of petitioner’s trial that she mentioned to police investigators. In
7 addition, at trial, petitioner’s counsel made a motion-in-limine requesting all
8 potentially exculpatory evidence, including criminal records of all prosecution
9 witnesses.

10 17. Counsel for petitioner has obtained five newspaper accounts of the status of the
11 Madden investigation and attaches those to the petition, requesting judicial notice
12 of the on-going investigation and the consequences in terms of dismissal.

13 18. Petitioner's custodial status and the matter of both the accuracy of the lab results
14 and the fact that the prosecution did not disclose Madden's prior conviction of a
15 crime of moral turpitude require that immediate action be taken by this court as
16 to his continued status. Petitioner is entitled to the same level of review accorded
17 others with cases involving Madden drug analysis results.

18 19. The attached Memorandum of Points and Authorities and exhibits are
19 incorporated by reference herein.

20 20. Petitioner has no other adequate or speedy remedy at law.

21 **Valle files writ of habeas corpus in the Court of Appeal.**

22 21. A petition for writ of habeas corpus has previously been filed by petitioner’s
23 appellate counsel in the Court of Appeal, First Appellate District.²⁵ On March
24 18, 2010, the Court of Appeal denied the petition for habeas corpus without

25
26 ²⁴ Exhibit I - Informal Discovery Request filed on June 10, 2009.

27 ²⁵ Exhibit L - A copy of petitioner’s writ of habeas corpus which was filed with the Court of
28 Appeal.

1 prejudice to be refiled in the San Francisco City and County Superior Court.²⁶

2 22. Petitioner will suffer irreparable harm if he is subjected to continued unlawful
3 restraint of his liberty since he has been denied his fundamental right to a fair
4 trial.

5 **Prayer for Relief**

6
7 Wherefore, petitioner respectfully asks this Court to:

- 8 (a) Take judicial notice of the attached newspaper articles from the San Francisco
9 Chronicle of March 10, 11, 15 and 18, 2010, at least insofar as indicating the fact
10 of this inquiry and the consequences to others accused of drug crimes involving
11 this same lab technician under Evidence Code section 452;
- 12 (b) Take judicial notice of Madden’s Criminal Docket from San Mateo County
13 under Evidence Code section 452;
- 14 (c) Take judicial notice of the ASCLD/LAB Inspection Report of the San Francisco
15 Police Department Criminalistics Laboratory which was inspected on November
16 17-20, 2009 under Evidence Code section 452.
- 17 (d) Set aside and reverse petitioner’s conviction and grant a new trial;
- 18 (e) In the alternative, order the San Francisco District Attorney’s Office and the San
19 Francisco Sheriff’s Department to show cause why relief should not be granted;
- 20 (f) Grant whatever further relief this Court finds appropriate and in the interests of
21 justice.

22
23 By: _____
24 Hadi Razzaq
25 Deputy Public Defender
26 Attorney for Rigoberto Valle

27 _____
28 ²⁶ Exhibit M - A copy of the Court of Appeal’s order denying the petition for writ of habeas
corpus without prejudice to being refiled in the San Francisco City and County Superior Court.

1
2 **Exhibits (Attached to Petition)**

3 Exhibit A: CMS printout in Court Number 2422006/209184.

4 Exhibit B: Copy of police incident report of Deborah Madden's arrest on October 2, 2007.

5 Exhibit C: Criminal Case Docket - Deborah Jean Madden (Front page only).

6 Exhibit D: San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician accused of skimming.

7 Exhibit E: San Francisco Chronicle Article - March 10, 2010 - Crime lab fallout: Drug defendants go free.

8 Exhibit F: San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to investigate lab tech.

9 Exhibit G: San Francisco Chronicle Article - March 15, 2010 - SF Police waited 2 months before drug lab probe.

10 Exhibit H: San Francisco Chronicle Article - March 18, 2010 - S.F. police hope officers can do drug testing.

11 Exhibit I: Informal Discovery Request filed on June 10, 2009.

12 Exhibit J: ASCLD/LAB Inspection Report - San Francisco Police Department Criminalistics Laboratory (Inspected: November 17-20, 2009).

13 Exhibit K: Declaration of Petitioner's counsel.

14 Exhibit L: A copy of petitioner's writ of habeas corpus which was filed with the Court of Appeal.

15 Exhibit M: A copy of the Court of Appeal's order denying the petition for writ of habeas corpus without prejudice to being refiled in the San Francisco City and County Superior Court.

16 Exhibit N: Copy of Valle's Penal Code section 995 motion.

17 Exhibit O: Narcotics Analysis from S.F.P.D.

1
2 **Memorandum of Points and Authorities**

3 **1. Habeas corpus is the appropriate mechanism to remedy the denial of a**
4 **fair trial.**

5 Certain constitutional rights, including the right to a fair trial, are considered so
6 fundamental that their denial or impairment in the trial court furnishes grounds for habeas
7 corpus relief. Non-disclosure of material evidence by law enforcement constitutes a
8 denial of a fair trial. (*In re Miranda* (2008) 43 Cal.4th 541 [non-disclosure of exculpatory
9 information entitled defendant to relief from both sentence of death and conviction by
10 guilty plea for second degree murder]; *In re Ferguson* (1971) 5 Cal.3d 525; *In re Lee*
11 (1980) 103 Cal.App.3d 615.) Valle is currently in-custody in the San Francisco County
12 Jail under the custody of the San Francisco Sheriff's Department.

13 **2. This court has jurisdiction over Valle's habeas claim because it**
14 **challenges his judgment of conviction.**

15 "If the challenge is to a particular judgment or sentence, the petition should be
16 transferred to the court which rendered judgment if that court is a different court from the
17 court wherein the petition was filed, in accordance with directions contained in our earlier
18 decisions heretofore noted." (*Griggs v. Superior Court of San Bernardino County* (1976)
19 16 Cal. 3d 341, 347.) The jury trial took place and judgment against petitioner was
20 rendered in the San Francisco Superior Court, therefore this court has jurisdiction.

21 **3. Under the Due Process Clause, favorable evidence must be disclosed to**
22 **the defense.**

23 In *Brady v. Maryland* (1963) 373 U.S. 83, 87, 83 S.Ct.1194, 1196-97, the Supreme
24 Court announced that "suppression by the prosecution of evidence favorable to an
25 accused upon request violates due process where the evidence is material either to guilt or
26 punishment..." (See also *Kyles v. Whitley* (1995) 514 U.S. 419, 115 S.Ct. 1555; *Izazaga*
27 *v. Superior Court* (1991) 54 Cal.3d 356, 378 [prosecution has a duty to disclose all
28

1 substantial material evidence favorable to the accused]; *People v. Morris* (1988) 46
2 Cal.3d 1, 29-30 [it is well settled that prosecution has a duty to disclose material
3 exculpatory evidence]; *People v. Ruthford* (1975) 14 Cal.3d 399, 406 [the fundamental
4 responsibility of the district attorney to present material evidence to the court includes a
5 duty to disclose to the defense substantial material evidence favorable to the accused in
6 appropriate cases].)

7 A *Brady* violation is established where:

- 8 1. information favorable to the accused,
- 9 2. was not produced when it should have been, and
- 10 3. the information not disclosed is "material." (*Brady, supra*, 373 U.S. at 87, 83 S.Ct. at
11 1196-97; *Kyles, supra*, 514 U.S. 419, 115 S.Ct. 1555; *Giglio v. United States* (1972)
12 405 U.S. 150, 92 S.Ct. 763; *United States v. Bagley* (1985) 473 U.S. 667, 682, 105
13 S.Ct. 3375, 3383.)

14 **A. Favorable evidence either helps the defendant or hurts the prosecution.**

15 Favorable evidence comes in many forms. It includes exculpatory evidence as well as
16 evidence that can be used for impeachment purposes. (*Giglio, supra*, see also *In re*
17 *Sassounian* (1995) 9 Cal.4th 535, 544 [evidence is favorable if it either helps the
18 defendant or hurts the prosecution, as by impeaching one of its witnesses]; *Morris, supra*,
19 46 Cal.3d at 30 [suppression of evidence bearing on credibility of a key prosecution
20 witness is a denial of due process]; *Ruthford, supra*, 14 Cal.3d at 406, 408 [prosecution
21 has a duty to disclose evidence relating directly to question of guilt, relevant to
22 punishment, or the credibility of material witness]; *People v. Santos* (1994) 30
23 Cal.App.4th 169, 178 [constitutional duty of disclosure extends to evidence which may
24 reflect on the credibility of a material witness].)

25 Courts have routinely and categorically held that impeachment evidence is favorable
26 evidence that must be disclosed under *Brady*. (*Carriger v. Stewart* (9th Cir. 1997) 132
27 F.3d 463, 481 [evidence must be disclosed where it might "have been used to impeach a

1 government witness, because if disclosed and used effectively, it may make the difference
2 between conviction and acquittal"]; *Paradis v. Arave* (9th Cir. 2001) 240 F.3d 1169, 1179:
3 see also *In re Pratt* (1999) 69 Cal.App.4th 1294, 1316 [had evidence of the informant's
4 true relationship with law enforcement been disclosed, defense counsel could have asked
5 numerous other questions to establish the witness' bias and attack his credibility]; *People*
6 *v. Kasim* (1997) 56 Cal.App.4th 1360, 1382 [where credibility of accomplices was crucial
7 to prosecution's case disclosure takes on added importance and jury is "entitled to know
8 all about historical events bearing on these witnesses' propensity to be truthful or
9 untruthful"]; *United States v. Bernal-Obeso* (9th Cir. 1993) 989 F.2d 331, 334
10 [prosecutor's duty to "turn over to defense in discovery all material information casting a
11 shadow on a government witness's credibility".] Moreover, where the prosecution's case
12 rests upon the testimony of one key witness, "any impeachment evidence... falls within
13 the *Brady* rule and should have been produced by the government." (*United States v.*
14 *Service Deli* (9th Cir. 1998) 151 F.3d 938, 943.)

15 **B. Disclosure of material evidence in the state's possession is an independent**
16 **obligation of the state.**

17 **(1) Sua sponte duty.**

18 The obligation to disclose material evidence is an affirmative one without need for
19 defense request. (*United States v. Bagley, supra*, 473 U.S. at 682, 105 S.Ct. at 3383-84;
20 see also *Kyles, supra*, 115 S.Ct. at 1565; *Izazaga, supra*, 54 Cal.3d at 378; *Morris, supra*,
21 46 Cal.3d at 30; *Ruthford, supra*, 14 Cal.3d at 406; *In re Steele* (2004) 32 Cal.4th 682,
22 696-697.)

23 **(2) Prosecutor need not personally know.**

24 Furthermore, it does not matter whether the undisclosed evidence was in the hands of
25 the police rather than the prosecution. (*Kyles, supra*, 115 S.Ct. at 1567-68.) *Brady*
26 imposes a duty to disclose on all members of the "prosecution team," including law
27 enforcement officers and law enforcement agencies that were in any way involved with
28

1 the case. (*Id.*, at 1567; *United States v. Endicott* (1989) 869 F.2d 452, 455.) The
2 "prosecutor has a duty to learn of any favorable evidence known to the others acting on
3 the government's behalf in the case, including the police." (*Kyles, supra*, 115 S.Ct. at
4 1567.)

5 **(3) Bad faith not needed.**

6 Similarly, the failure to disclose material evidence cannot be excused due to the
7 negligence or "good faith" of the prosecutor. Indeed, the good faith or bad faith of the
8 prosecutor is irrelevant to the analysis. (See *Ruthford, supra*, 14 Cal.3d at 406 [either
9 intentional or negligent prosecutorial suppression of substantial material evidence denied
10 defendant a fair trial and requires reversal]; *Merrill v. Superior Court* (1994) 27
11 Cal.App.4th 1586, 1594 [whether failure to disclose was intentional or negligent is
12 irrelevant, its occurrence undermines the public's confidence in the criminal justice
13 system].) If favorable evidence was not disclosed, a *Brady* violation exists "irrespective
14 of the good faith or bad faith of the prosecution." (*Brady, supra*, 373 U.S. at 87, 83, S.Ct.
15 at 1197; *United States v. Alvarez* (9th Cir. 1996) 86 F.3d 901, 903 cert. denied (1997) 117
16 S.Ct. 748.)

17 As the United States Supreme Court stated in *Banks*, "Our decisions lend no support
18 to the notion that defendants must scavenge for hints of undisclosed *Brady* material when
19 the prosecution represents that all such material has been disclosed... A rule thus
20 declaring 'prosecutors may hide, defendant must seek' is not tenable in a system
21 constitutionally bound to accord defendants due process." (*Banks v. Dretke* (2004) 124
22 S.Ct. 1256, 1275.)

23 Moreover, the obligation to turn over favorable evidence is an ongoing one. The
24 obligation does not end at the conclusion of the trial. Indeed, the obligation carries on
25 throughout the appellate and habeas proceedings as well. (See *Thomas v. Goldsmith* (9th
26 Cir. 1992) 979 F.2d 746, 749-50 [prosecution had a duty to turn over exculpatory
27 evidence relevant to a habeas corpus proceeding]; *People v. Kasim* (1997) 56 Cal.App.4th
28

1 1360 ["The duty to provide discovery is not limited to the time before trial; discovery is
2 an ongoing responsibility, which extends throughout the duration of the trial and even
3 after conviction."], citing, *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179.)

4 Moreover, in certain circumstances, the touchstone of disclosure is receipt of the
5 evidence by the defense. As the California Supreme Court in *Brown* stated: "The
6 principles *Brady* and its progeny embody are not abstractions or matters of technical
7 compliance, [citations omitted] The sole purpose is to ensure the defendant has all
8 available exculpatory evidence to mount a defense. To that end, a document sent but not
9 received is as useless as a document not sent at all. In both situations, the right to a fair
10 trial is equally denied." (*In re Brown* (1998) 17 Cal. 4th 873, 881.) "The risk and
11 consequences of nonreceipt must fall to the prosecution. Despite any seeming unfairness
12 to the prosecution, no other result would satisfy due process..." (*Id.*, at 882.)

13 Favorable evidence must be disclosed regardless of what the prosecutor may think of
14 the evidence's value or veracity. It is not the province of the prosecution to judge the
15 veracity of a witness' statement. As stated by the Ninth Circuit, "It is not the role of the
16 prosecutor to decide that facially exculpatory evidence need not be turned over because
17 the prosecutor thinks the evidence is false. It is 'the criminal trial, as distinct from the
18 prosecutor's private deliberations' that is the 'chosen forum for ascertaining the truth about
19 criminal accusations.' To the extent the prosecutor is uncertain about the materiality of a
20 piece of evidence, 'the prudent prosecutor will resolve doubtful questions in favor of
21 disclosure.'" (*United States v. Alvarez* (9th Cir. 1996) 86 F.3d 901, 904 [citations
22 omitted].) As the United States Supreme Court put it, "[t]he established safeguards of the
23 Anglo-American legal system leave the veracity of a witness to be tested by
24 cross-examination, and the credibility of his testimony to be determined by a properly
25 instructed jury." (*Hoffa v. United States* (1966) 385 U.S. 293, 311-312, 87 S.Ct. 408,
26 418.)

1 **C. Materiality: When the undisclosed material evidence would have altered one**
2 **juror's assessment.**

3 The standard for determining "materiality" under *Brady* depends upon the
4 circumstances surrounding the violation.

5 In *Banks*, the United States Supreme Court stated that "[o]ur touchstone of
6 materiality is *Kyles* (citation omitted). *Kyles* instructed that the materiality standard for
7 *Brady* claims is met when 'the favorable evidence could reasonably be taken to put the
8 whole case in such a different light as to undermine confidence in the verdict.'" (*Banks*,
9 *supra*, 124 S.Ct. at 1276-1277.)

10 In *Price*, the Ninth Circuit Court of Appeal held that materiality is established when
11 "there is a reasonable probability that the withheld evidence would have altered at least
12 one juror's assessment." (*United States v. Price* (9th Cir. 2009) 566 F.3d 900, 914
13 [citations omitted].)

14 **4. Application of foregoing law to the evidence uncovered here**
15 **demonstrates that a series of *Brady* violations occurred. Reversal is**
16 **required.**

17 Petitioner's Constitutional rights were violated by the prosecution's *Brady* violations.
18 Throughout the case, the prosecution failed to disclose favorable, material evidence
19 which would have impeached its key witness at trial and undermined the state's evidence.
20 Because of these *Brady* violations, the petition must be granted and judgement reversed.

21 **A. By failing to disclose the exculpatory and impeaching evidence — Madden's prior**
22 **conviction, alcohol and drug usage, alleged theft of drugs, internal investigation**
23 **and her allegations that the crime lab is "sloppy" and mishandled and lost**
24 **evidence — the prosecution violated *Brady*.**

25 Since Madden's arrest on October 2, 2007, the prosecution was in constructive
26 possession of material evidence that should have been disclosed to petitioner before his
27 trial which was critical to his defense. Madden's arrest for domestic violence is only the
28 first piece of evidence which should have been disclosed to petitioner. In recent days,
petitioner has become aware of numerous other events which flowed from Madden's

1 arrest which would have significantly impacted on his ability to defend himself at trial
2 had the evidence been disclosed by the prosecution:

- 3 1) Madden had been drinking during the domestic violence incident;
- 4 2) Madden testified in her defense;
- 5 3) James Mudge, Director of the San Francisco Crime Lab, testified as a character
6 witness for Madden;
- 7 4) The San Mateo prosecutor was allowed by the trial court to cross-examine
8 Mudge as to the internal investigation being conducted by Madden's employers
9 at that time;
- 10 5) Madden was convicted of domestic violence and vandalism;
- 11 6) Madden was sentenced to domestic violence counseling and ordered to abstain
12 from the use of any alcohol and to perform alcohol testing when asked to by her
13 probation officer. Among other conditions, Madden was ordered not to possess
14 any weapons.
- 15 7) Madden was arrested on March 3, 2010 for violating the terms of her probation
16 when police discovered a gun in her home after a search pursuant to a warrant.

17 In addition to all of the events surrounding Madden's domestic violence case,
18 petitioner has become aware through news accounts that the integrity and reliability of the
19 crime lab's testing may have been undermined by sloppy work and Madden's admitted
20 drug tampering and consumption:

- 21 1) Several lab technicians suspected that someone had been stealing evidence and a
22 supervisor noted apparent tampering with the packaging of drug evidence;
- 23 2) An investigation followed which specifically linked Madden to missing drugs in
24 at least 6 cases;
- 25 3) Police believe that Madden may have testified in some of these six cases and
26 may have perjured herself;
- 27 4) Madden admitted to consuming cocaine from five samples of drug evidence;

- 1 5) Madden’s own sister notified the crime lab on December 16, 2009 that she had
2 found what appeared to be a lab vial of cocaine at Madden’s home in San Mateo.
3 Despite notifying the crime lab of this discovery on December 16, 2009, police
4 did not commence a criminal probe until two months later.
- 5 5) Madden leveled charges that the lab drug-testing process was sloppy and that
6 technicians consistently lost or mishandled evidence;
- 7 6) In addition, an audit by the American Society of Crime Laboratory Directors
8 shows that the San Francisco Crime Lab does not have a secure chain of custody
9 for evidence, fails to keep detailed case records and does not meet the standards
10 of cleanliness.

11 All of the evidence pertaining to the domestic violence arrest, trial and conviction
12 would have been used to impeach Madden during petitioner’s preliminary hearing and
13 jury trial. In addition, information regarding the internal investigation being conducted
14 by Madden’s employer in February 2008, as well as Madden’s alcohol and drug abuse,
15 would also have been used to impeach Madden’s credibility and undermine her test
16 results. Finally, any information regarding “sloppy”, “lost”, and “mishandled” drug
17 evidence which Madden alleged about the crime lab, would have undermined the
18 reliability and integrity of all test results from the crime lab.

19 **1. The evidence of Madden’s domestic violence case, the internal investigation
20 of Madden, her alcohol and drug use, and her allegations that the crime lab is
“sloppy” is favorable.**

21 Madden’s (1) domestic violence case; (2) alcohol and drug use; (3) internal
22 investigation by her employer; and (4) allegations about the “sloppy” crime lab constitute
23 favorable evidence under *Brady*. The evidence is directly exculpatory, impeaching and
24 could have led to discovery of other admissible evidence.

25 One of the elements of the charged offense (possession of cocaine) was whether the
26 substance was in fact a narcotic. Here, the credibility of the witness who tested the
27 substance as well as the reliability of her results were at issue at the jury trial. The

1 substance of Madden’s arrest and her history of alcohol and drug use would have been
2 used to test her credibility before the jury. Because this information was not discovered,
3 the jury was deprived of an opportunity to exercise its discretion and to evaluate the
4 credibility and reliability of this evidence.

5 In addition, Madden was under an internal investigation during the time of her
6 domestic violence jury trial (February 2008). This information came out during her
7 domestic violence trial when the San Mateo prosecutor was granted permission to cross-
8 examine Madden’s character witness, James Mudge, as to the internal investigations
9 taking place by Madden’s employer. Any information regarding this internal
10 investigation may have furnished both exculpatory and impeachment information
11 regarding the reliability and integrity of her lab work.

12 Furthermore, Madden made some very serious allegations about the integrity of the
13 crime lab when she told investigators that the lab was sloppy and that evidence had been
14 mishandled and lost. This evidence directly undermines the reliability of all results
15 coming from the crime lab and leaves many questions unanswered. For how long has the
16 lab been “sloppy”? Were samples mishandled and lost at the time that petitioner’s
17 samples were tested? Any information regarding sloppy lab work and mishandled
18 evidence is favorable for petitioner.

19 **2. The evidence of Madden’s domestic violence case, alcohol and drug use,**
20 **internal investigation, and allegations about the “sloppy” lab were not**
21 **disclosed.**

21 Madden’s (1) domestic violence case; (2) alcohol and drug use; (3) internal
22 investigation by her employer; and (4) allegations about the “sloppy” crime lab were
23 never disclosed to petitioner before his trial. This is undisputed. In fact, in all of the
24 news articles which have covered the crime lab crisis, the prosecution has never stepped
25 forward to acknowledge turning over this information in a timely fashion.

26 It does not matter if the undisclosed evidence was in the hands of the police or other
27 agents of law enforcement because *Brady* imposes a duty to disclose upon all members of
28

1 the “prosecution team.” (*Kyles, supra*, 115 S.Ct at 1567-68; *United States v. Endicott,*
2 *supra*, 869 F.2d at 455.) Accordingly, the prosecution has been in constructive
3 possession of all of this information because those in possession of this evidence and
4 information are agents of law enforcement. Specifically, Madden has been an agent of
5 law enforcement for the past 29 years. She was employed by the lab during her arrest,
6 trial and conviction for domestic violence. Any information in Madden’s possession was
7 in the prosecution’s constructive possession. Another agent of law enforcement, James
8 Mudge, the Director of the San Francisco Crime Lab, was also aware of her domestic
9 violence case and that it was alcohol related because he was a character witness at
10 Madden’s trial. Both Madden and Mudge were also aware of the internal investigation
11 that was being conducted by Madden’s employer in February of 2008. Finally, Madden
12 was aware of sloppy lab work where evidence was mishandled and lost. Since agents of
13 law enforcement knew about this evidence, the prosecution was in constructive
14 possession of exculpatory and impeachment *Brady* evidence requiring disclosure.

15 **3. The evidence of Madden’s domestic violence case, alcohol and drug use,**
16 **internal investigation, and allegations about the “sloppy” lab are material.**

17 In *Price*, the Ninth Circuit had little trouble finding *Brady* error where the
18 prosecution failed to disclose impeachment evidence (prior criminal history) of a crucial
19 witness for the prosecution. The witness, Phillips, was the prosecution’s star witness and
20 the jury had little reason to doubt her and question her truthfulness. Price was unable to
21 give the jury a reason to doubt Phillips’ testimony because the prosecution had failed to
22 give him the impeachment evidence detailing her history of dishonest and fraudulent
23 conduct. (*Price, supra*, 566 F.3d at 913-14.) The Ninth Circuit held that “[h]ad the
24 evidence of Phillips’ past conduct been disclosed, ‘there is a reasonable probability that
25 the withheld evidence would have altered at least one juror’s assessment’ regarding”
26 Price’s guilt. (*Price, supra*, 566 F.3d at 914 [citations omitted].)

27 The facts presented herein are equally compelling. Madden was a key prosecution
28

1 witness. Without her, the prosecution could not have made its case that petitioner sold a
2 controlled substance. In fact, the only evidence that petitioner was in possession of a
3 controlled substance was Madden’s testimony.

4 Had the prosecution disclosed the foregoing exculpatory and impeachment evidence,
5 the probability that the result of the proceeding would have been different is greater than
6 a reasonable one — it is virtually certain. By not disclosing the powerful exculpatory and
7 impeaching evidence in the case — Madden’s criminal case, alcohol use, internal
8 investigation, and serious allegations about the integrity of the crime lab — any
9 confidence in the outcome of the trial has been decimated. How could it not be? Indeed,
10 with this evidence, the defense could have (1) impeached Madden’s credibility through
11 her criminal case, substance abuse, and internal investigation, (2) demonstrated that the
12 alleged drugs were tampered with by Madden and possibly other technicians given the
13 “sloppy” lab work allegations, (3) undermined the reliability of the crime lab’s testing
14 results based upon Madden’s serious allegations that the crime lab is “sloppy” and that
15 evidence is consistently mishandled and lost, and (4) explored other avenues of defenses
16 based upon the undisclosed exculpatory and impeachment evidence. It is highly likely
17 that had the exculpatory and impeachment evidence been disclosed, Madden’s testimony
18 would not have been believed.

19 **B. Whether viewed individually or cumulatively, the undisclosed favorable evidence**
20 **is material.**

21 When assessing materiality under *Brady*, courts must look at th evidence both
22 individually and cumulatively. (See *In re Brown, supra*, 17 Cal.4th at 886.) Thus, the
23 probability of a different result is “assessed by considering the evidence in question under
24 the totality of the relevant circumstances and not in isolation or in the abstract.” (*In re*
25 *Sassounian, supra*, 9 Cal.4th 544.) In the present case, while each category standing
26 alone undermines confidence in the outcome of the case, taken as a whole, the verdict
27 cannot stand as the suppression of the foregoing evidence virtually eliminates any
28

1 confidence in the outcome of the trial.

2 **Conclusion**

3 Petitioner’s conviction is in violation of the Constitutions of the State of California
4 and the United States because, contrary to the requirement of *Brady v. Maryland*, the
5 prosecution failed to disclose favorable, material evidence. Especially in light of the
6 United States Supreme Court’s decree that materiality for purposes of *Brady* analysis is to
7 be defined “in terms of suppressed evidence considered collectively, not item-by-item”
8 (*Kyle v. Whitley, supra*, 514 U.S. at 436), there is no doubt that the failure to disclose the
9 information presented herein undermines confidence in petitioner’s jury verdict. Had the
10 evidence of Madden’s (1) arrest, trial and conviction, (2) drug and alcohol use, (3)
11 internal investigation, and (4) serious allegation about the crime lab been disclosed, “there
12 is a reasonable probability that the withheld evidence would have altered at least one
13 juror’s assessment” regarding Valle’s drug sales. (*Price, supra*, 566 F.3d at 914.) The
14 writ sought by petitioner should therefore issue.

15 Dated: March 23, 2010

16 Respectfully submitted,

17
18 _____
19 Hadi Razzaq
20 Deputy Public Defender
21 Attorney for Rigoberto Valle
22
23
24
25
26
27
28

1 **Proof of Service**

2

3 I, the undersigned say:

4 I am over eighteen years of age and not a party to the above action. My business
5 address is 555 Seventh Street, San Francisco, California 94103.

6 On March 23, 2010, I personally served a copy of the attached on the following:

7

8 Office of the District Attorney
9 City and County of San Francisco
10 Room 300, 850 Bryant Street
San Francisco, CA 94103
Attention: Louise Ogden, Assistant District Attorney

11 Sheriff's Department
12 City Hall, Room 456
13 1 Carlton Goodlett Place
San Francisco, CA 94102

14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on March 23, 2010 at San Francisco, California.

16 _____
17 _____

1 **Exhibit K**

2 **Declaration of Counsel, Hadi Razzaq**

3 I, the undersigned, state:

4 I am the attorney assigned to represent Rigoberto Valle in this habeas corpus petition.

5 Petitioner is the defendant in felony court number 2422006/209184.

6 On September 25, 2009, in Department 29 of the San Francisco Superior Court,
7 petitioner was convicted by jury of the following felony offense: sales of cocaine (Health
8 & Safety Code section 11352(a)).²⁷ The narcotics in this case were tested by criminalist
9 Deborah Madden.²⁸

10 On December 3, 2009, petitioner was sentenced as follows: 5 years states prison
11 execution of sentence suspended, five years of formal probation, and 1 year in the county
12 jail with 18 days credit (161 days waived), among other conditions.²⁹

13 Petitioner is unlawfully restrained of his liberty since he is currently in custody under
14 jail # 2422006, in San Francisco County Jail # 2, 425 Seventh Street, San Francisco, CA
15 94103 and in the custody of the San Francisco Sheriff's Department. In addition, he is
16 currently on probation. If petitioner's probation is revoked, he faces up to five years in
17 state prison.

18 From March 10 thru 18, 2010, I read newspaper accounts concerning a SFPD drug
19 test technician named Deborah J. Madden who allegedly absconded with certain drug
20 samples during her work at the lab. Upon information and belief, Madden left her job in
21 December 2009 and a lab audit conducted during the same month discovered the
22 tampering with samples. "That review was triggered when other technicians suspected
23 someone had been stealing evidence and supervisor noted apparent tampering with the
24 packaging of drug evidence, San Francisco Police Chief George Gascon said at a news

25 _____
26 ²⁷ Exhibit A - CMS printout in Court Number 2422006/209184.

27 ²⁸ Exhibit O - Narcotics Analysis form S.F.P.D.

28 ²⁹ Exhibit A - CMS printout.

1 conference” on March 9, 2010.³⁰ Specifically, the “investigation linked [Madden] to
2 missing drugs in at least six cases in the latter part of 2009.”³¹ Police officials said that
3 Madden might have been summoned to testify in some of these six cases and may have
4 perjured herself about the evidence.³² According to authorities, “Madden was supposed
5 to vouch for the weight and purity of seized drugs but instead used the cocaine.”³³ The
6 tampering, theft and usage of drugs, as well as the alleged perjury, would be a basis for
7 impeachment of a witness at trial in terms of credibility. In addition, it is reasonably
8 probable that such evidence would undermine confidence in the jury verdict.

9 Upon information and belief, newspaper accounts indicate that Madden was
10 interviewed as part of an investigation into the missing drugs where she “leveled charges
11 of her own about the lack of control over drug evidence. One official said Madden called
12 the drug-testing process at the lab ‘sloppy’.”³⁴ Madden also indicated that lab technicians
13 “consistently lost or mishandled evidence.”³⁵ These statements call into question the
14 integrity and reliability of all crime lab results.

15 Upon information and belief, according to news reports, in her two-hour statement to
16 police, Madden told police that she began to use cocaine in October of 2009 and admitted
17 to consuming cocaine from five samples of drug evidence.³⁶

18 Upon information and belief, newspaper accounts also indicate that “police released
19

20 ³⁰ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician
21 accused of skimming.

22 ³¹ *Id.*

23 ³² *Id.*

24 ³³ *Id.*

25 ³⁴ *Id.*

26 ³⁵ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to
27 investigate lab tech.

28 ³⁶ *Id.*

1 an audit by the American Society of Crime Laboratory Directors that shows the San
2 Francisco lab does not have a secure chain of custody for evidence, fails to keep detailed
3 case records and does not meet standards of cleanliness. The audit found that the lab is
4 routinely underfunded and understaffed and has to rely on overtime to fulfill its
5 mission.”³⁷

6 Upon information and belief, newspaper accounts indicate that Madden’s sister
7 informed the crime lab on December 16, 2009 that she found what appeared to be a lab
8 vial of cocaine at Madden’s home in San Mateo. Despite informing the crime lab in
9 December of last year, the San Francisco police took two months to launch a criminal
10 probe into Madden’s suspected theft of drug evidence.³⁸ In addition, newspaper accounts
11 indicate that Madden has been in treatment recently for drug and alcohol use.³⁹

12 Upon information and belief, newspaper accounts also indicate that this long-time
13 employee suffered a domestic violence conviction,⁴⁰ which would be a basis for
14 impeachment of a witness at trial in terms of credibility.

15 Upon information and belief, Madden was actually arrested on October 2, 2007 for
16 domestic violence and assault charges.⁴¹ Alcohol was involved in this incident of
17 domestic violence. Madden testified in her defense and the Director of the San Francisco
18 Crime Lab, Jim Mudge, testified as a character witness. On February 19, 2008, during
19 the trial, the court granted the San Mateo prosecutor’s request to explore the internal

21 ³⁷ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician
22 accused of skimming; Exhibit J - ASCLD/LAB Inspection Report - San Francisco Police
23 Department Criminalistics Laboratory (Inspected: November 17-20, 2009).

24 ³⁸ Exhibit F - San Francisco Chronicle Article - March 15, 2010 - Police waited 2 months to
25 investigate lab tech.; Exhibit G - San Francisco Chronicle Article - March 15, 2010 - SF Police
26 waited 2 months before drug lab probe.

27 ³⁹ Exhibit E - San Francisco Chronicle Article - March 10, 2010 - Crime lab fallout: Drug
28 defendants go free.

⁴⁰ *Id.*

⁴¹ Exhibit B - Copy of police incident report of Deborah Madden’s arrest on October 2, 2007.

1 investigation being conducted by Madden's employer at that time on cross- examination
2 of Mudge or during direct examination of a rebuttal witness. Madden was convicted of
3 misdemeanor domestic violence and vandalism offenses on February 20, 2008.⁴² I have
4 reviewed a copy of the docket which details what occurred at Madden's trial and provides
5 a detailed report of all of Madden's sentencing conditions. The docket also indicates that
6 Mudge testified for Madden and that the prosecutor was allowed to cross-examine him
7 regarding the internal investigation which was occurring at that time by Madden's
8 employer.

9 Madden was sentenced on May 9, 2008 as follows: Imposition of sentence
10 suspended, 3 years supervised probation, 30 days county jail, 104 hours of domestic
11 violence counseling, abstain from the use and possession of alcoholic beverages, submit
12 to alcohol tests when directed by probation officer, participate in any education,
13 rehabilitation or treatment program as directed by probation officer, and not to possess
14 any weapons, among other conditions.

15 Upon information and belief, as a consequence of Madden's apparent misfeasance, as
16 of March 18, 2010, over 50 drug cases involving defendants represented by the Public
17 Defender's Office have been dismissed and numerous individuals incarcerated because of
18 those cases have been released from custody. Per a news article released on March 18,
19 2010, over 180 drug cases in total have been dropped by the prosecution as a result of
20 Madden's actions.⁴³

21 Upon information and belief, Madden was arrested on March 3, 2010 for weapons
22 charges after a search of her home pursuant to a warrant.⁴⁴ This arrest constitutes another
23 criminal offense and a violation of the terms of her domestic violence probation.

24 ⁴² Exhibit C - Criminal Case Docket - Deborah Jean Madden (Front page only).

25 ⁴³ Exhibit H - San Francisco Chronicle Article - March 18, 2010 - S.F. police hope officers
26 can do drug testing.

27 ⁴⁴ Exhibit D - San Francisco Chronicle Article - March 10, 2010 - SFPD drug-test technician
28 accused of skimming.

1 Upon information and belief, at petitioner's preliminary hearing, the prosecution
2 introduced the alleged narcotics sold by Valle through a lab report that contained a
3 declaration by Madden under Evidence Code section 1280 which requires that the
4 prosecution demonstrate the document's trustworthiness. Petitioner's counsel filed a
5 Penal Code section 995 motion⁴⁵ arguing there was no independent evidence of
6 trustworthiness as required under Evidence Code section 1280, which was denied on
7 September 4, 2009. The undisclosed impeachment and exculpatory information seriously
8 undermines Madden's trustworthiness.

9 Upon information and belief, in petitioner's jury trial, this same lab technician
10 testified for the prosecution and proffered evidence that was used to convict him.

11 Upon information and belief, prior to trial, petitioner's counsel made an informal
12 discovery request specifically asking for *Engstrom/Wheeler* on all prosecution
13 witnesses.⁴⁶ Despite this request, petitioner's counsel was never provided with any
14 *Engstrom/Wheeler* on Madden. In addition, through this request, petitioner's counsel also
15 requested any exculpatory evidence in the possession of any police department, the
16 District Attorney, or any other person or agency and available to the prosecution.⁴⁷ The
17 latter request would include any information that Madden had regarding the "sloppy" lab
18 work and the "lost" and "mishandled" evidence at the time of petitioner's trial that she
19 mentioned to police investigators. In addition, at trial, petitioner's counsel made a
20 motion-in-limine requesting all potentially exculpatory evidence, including criminal
21 records of all prosecution witnesses.

22 I have obtained five newspaper accounts of the status of the Madden investigation
23 and attach these to the petition, requesting judicial notice of the on-going investigation
24 and the consequences in terms of dismissal.

25
26 ⁴⁵ Exhibit N - Copy of Valle's Penal Code section 995 motion.

27 ⁴⁶ Exhibit I - Informal Discovery Request filed on June 17, 2009.

28 ⁴⁷ *Id.*

1 Petitioner's custodial status and the matter of both the accuracy of the lab results and
2 the fact that the prosecution did not disclose Madden's prior conviction of a crime of
3 moral turpitude require that immediate action be taken by this court as to his continued
4 status. Petitioner is entitled to the same level of review accorded others with cases
5 involving Madden drug analysis results.

6 The attached Memorandum of Points and Authorities and exhibits are incorporated
7 by reference herein.

8 A petition for writ of habeas corpus has previously been filed by petitioner's
9 appellate counsel in the Court of Appeal, First Appellate District.⁴⁸ On March 18, 2010,
10 the Court of Appeal denied the petition for habeas corpus without prejudice to be refiled
11 in the San Francisco City and County Superior Court.⁴⁹

12 Petitioner will suffer irreparable harm if he is subjected to continued unlawful
13 restraint of his liberty since he has been denied his fundamental right to a fair trial.

14 The foregoing is true and correct, except those portions made upon information and
15 belief and I am informed and believe them to be true and correct, and made under penalty
16 of perjury this 23rd day of March, 2010 in the City and County of San Francisco, State of
17 California.

18
19
20

Hadi Razzaq
Deputy Public Defender

21
22
23
24
25

26 ⁴⁸ Exhibit L - A copy of petitioner's writ of habeas corpus which was filed with the Court of
Appeal.

27 ⁴⁹ Exhibit M - A copy of the Court of Appeal's order denying the petition for writ of habeas
28 corpus without prejudice to being refiled in the San Francisco City and County Superior Court.