

**S277072**

**FILED WITH PERMISSION**

**IN THE SUPREME COURT OF  
THE STATE OF CALIFORNIA**

VICTOR TELLEZ,	)	No.
	)	
Petitioner,	)	Super Court
v.	)	Case No.
	)	SCE369196
THE SUPERIOR COURT OF THE STATE	)	
OF CALIFORNIA, COUNTY OF SAN	)	Appellate case No:
DIEGO,	)	D079716
	)	
Respondent,	)	
	)	
THE PEOPLE OF THE STATE OF	)	
CALIFORNIA BY AND THROUGH THEIR	)	
ATTORNEY, SUMMER STEPHAN,	)	
DISTRICT ATTORNEY OF THE COUNTY	)	
OF SAN DIEGO,	)	
	)	
Real Party In Interest.	)	

**PETITION FOR REVIEW**

**After Published Opinion by the Court of Appeal,  
Fourth District, Division One**

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VICTOR TELLEZ

**TO: THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:**

Petitioner and Defendant, Victor Tellez, respectfully petitions for review of the published decision of the Court of Appeal, Fourth Appellate District, Division 1, filed October 18, 2022, denying Mr. Tellez’s petition for a writ of habeas corpus. Petitioner did not seek a rehearing.

**ISSUES PRESENTED**

Whether or not Petitioner herein, Mr. Victor Tellez, received ineffective assistance from his defense counsel in the trial court that deprived him the ability to enter a knowing, intelligent, and/or voluntary change of plea in his case? Did Tellez receive ineffective assistance of counsel when defense counsel failed to advise Tellez that he would be subject to the Sexually Violent Predator (SVP) law? Did Mr. Tellez suffer prejudice as a result?

**WHY REVIEW SHOULD BE GRANTED**

Review in this case should be granted to settle an important question of law. In *People v. Moore* (1998) 69 Cal. App. 4<sup>th</sup> 626, the California Supreme Court analogized SVP consequences to deportation. “SVP Act proceedings are more analogous to deportation [than the commitment

proceedings Moore cited], because an SVP commitment, like deportation, depends on additional findings by a different tribunal after the defendant has been sentenced.” (*Id.*, at p. 633.) That Court went on to state that the obligation of a court (not counsel) to advise a defendant of deportation arose from statute – specifically Penal Code Section 1016.5. Admittedly, there is no analogous statute requiring a court to advise defendants of potential SVP consequences. As stated in *Moore*, the court is required to advise defendants of direct consequences, and not of collateral consequences. *Moore* further held that SVP consequences were more collateral than direct, and therefore the court had no duty to advise the defendant. Notably, *Moore* did not address the responsibilities of defense counsel.

At times, the role of defense counsel is much greater than that of the court. As the California Supreme Court has explained, “[d]efense counsel clearly has far greater duties toward the defendant than has the court taking a plea.” (*In re Resendiz* (2001) 25 Cal. 4th 230, 246, *abrogated on other grounds by Padilla, supra.*) In the immigration context, Penal Code Section 1016.5 places an actual burden on the court to advise an individual about possible deportation if they are not a U.S. citizen. But even then, this court advisal is not the same as a competent advice from counsel, nor is it a substitute for competent advice from counsel. (*See Resendiz, supra; See also*

*People v. Patterson* (2017) 2 Cal. 5th 885, 898-899).

In *People v. Codinha* (2021) 71 Cal.App.5th 1047, the Fourth District Court of Appeal, Division 1, held that counsel did not have a duty under the constitution to advise of potential lifetime commitment under the Sexually Violent Predator Act. The court in *Codinha* cited heavily from *Moore*, ultimately adopting the conclusion that SVP consequences “would require additional steps and would depend on additional findings which would not be controlled by [Appellant’s] plea and admissions.” (*Id.* at p. 1067, quoting *People v. Moore, supra.*) However, the court in *Codinha* failed to acknowledge that the conclusion in *Moore*, on which they relied so heavily, was based on a finding that SVP proceedings are analogous to deportation proceedings. (*People v. Moore, supra* 69 Cal.App.4th at p. 633.)

Thus there is a tension between *Moore/Codinha* and *Padilla* and it must be resolved.

### **INTRODUCTION AND STATEMENT OF THE CASE**

Petitioner’s convictions were sustained as the result of a guilty plea entered on December 11, 2017, upon the incompetent advice of defense counsel at the trial court. The case was not heard by a jury.

Petitioner was convicted of one count of lewd acts upon a child in violation of Penal Code section 288, subdivision (a). There were no enhancements charged.



Petitioner was represented by counsel in the trial court: A Deputy Public Defender from the San Diego County Office of the Public Defender.

The prison sentence which Petitioner completed was three years, followed by a term of parole supervision that continues at the time of this filing.

Petitioner was released to Parole by the Department of Corrections and Rehabilitation on August 1, 2019, from the California Institution for Men in Chino, CA.

On August 1, 2019, Petitioner was arrested, after his transfer from San Quentin State Prison, at the California Institution for Men by the San Diego County Sheriff's Department pursuant to an Order to Produce for Arraignment Pursuant to Welfare and Institutions Code section 6600 et seq. regarding involuntary treatment of a sexually violent predator.

Since August 1, 2019, Petitioner has been in the custody of the San Diego County Sheriff's Department at Vista Detention Facility in Vista, California under civil commitment proceedings pursuant to Welfare and Institutions Code section 6600 et seq. in Superior Court Case No. SCE369196 / MH116049. The proceedings are a result of Petitioner's conviction for violating Penal Code section 288, subdivision (a), lewd acts upon a child.

On March 2, 2021, Petitioner filed a petition for writ of habeas corpus in the Superior Court of San Diego, East County Division. On May 4, 2021, the Honorable Roderick Shelton issued an Order to Show Cause, and also Denied the petition in part (Exhibits I, J, K, L).

On November 22, 2021, Petitioner filed a petition for writ of habeas corpus in the Fourth District Court of Appeal, Division 1. The appellate court denied the petition on November 30, 2021. (Exhibit N.)

On December 14, 2021, Petitioner filed a petition for review in the California Supreme Court. That review was granted on December 16, 2021, and the Court ordered the Fourth District Court of Appeal, Division 1, to vacate its summary denial and issue and order to show cause.

On February 25, 2022, the Fourth District Court of Appeals, Division 1, vacated its summary denial and issued an order to show cause.

On October 12, 2022, oral argument was held before the Fourth District Court of Appeal, Division 1, and the matter was submitted.

On October 18, 2022, the Fourth District Court of Appeal, Division 1, published an opinion denying Mr. Tellez's petition. (Exhibit O.)

Petitioner's imprisonment is illegal and in contravention of rights guaranteed by the Sixth Amendment to the United States Constitution and by Article I, Section 15 of the California Constitution, because Petitioner was denied the effective assistance of counsel in the trial court resulting in a plea that was entered without a knowing, intelligent, or voluntary waiver of constitutional rights. Petitioner was denied effective assistance of counsel in the following manner:

(a) Defense counsel did not advise Petitioner of the possibility of involuntary treatment of sexually violent predator proceedings and involuntary lifetime confinement as a sexually violent predator. Failure to advise Petitioner of the more serious sanction of possible lifetime incarceration, analogous to potential immigration consequences, resulted in a fundamental deprivation of Petitioner's rights to enter a knowing, intelligent, and voluntary plea.

Reasonably effective counsel would have recognized that the possibility of indefinite confinement would serve as a severe potential sanction and taken

this into consideration in his strategy. At a minimum, reasonably effective counsel would have ensured that defendant knew of the possibility of such a more serious consequence of his guilty plea.

No tactical reason can justify the failures of defense counsel, as he should have advised defendant that SVP proceedings and/or commitment were possible.

In so failing, defense counsel performed below the objective standard of reasonable competence under prevailing professional norms. Defense counsel deprived Petitioner of effective assistance of counsel, resulting in a guilty plea that was not knowing, intelligent, or voluntarily entered.

Petitioner has no other plain, speedy, or adequate remedy at law. The United States Supreme Court decided *Padilla v. Kentucky* (2010) 599 U.S. 356, which changed case precedent of *People v. Moore* (1998) 69 Cal.App.4th 626. The *Padilla* Court reasoned that immigration consequences are so inextricably linked with criminal proceedings that a defendant must be advised of immigration consequences prior to the entry of a guilty plea, and failure to advise must result in a withdrawal of a guilty plea. The First District Court of Appeal, Division Four in *Moore* stated that SVP consequences are analogous to deportation proceedings. (*People v. Moore, supra*, 69 Cal.App.4th at p. 662.) It would naturally follow then that if a criminal defendant must be advised of potential immigration consequences, a criminal defendant must be also be advised of potential SVP consequences prior to the entry of a guilty plea. The potential of such a severe sanction as lifetime SVP commitment is as inextricably linked with criminal proceedings as immigration consequences. Thus, the remedy for such failure to advise must also then be withdrawal of the

guilty plea.

The following exhibits reflecting the aforementioned proceedings are attached to hereto and incorporated herein by reference:

Exhibit A: Complaint

Exhibit B: Change of Plea Form and Docket

Exhibit C: Change of Plea Transcript

Exhibit D: Petitioner's Declaration

Exhibit E: Sentencing Docket and Abstract of Judgment

Exhibit F: Petition for Involuntary Treatment of a Sexually Violent Predator, Filed May 21, 2019

Exhibit G: Order to Produce

Exhibit H: Sheriff's Booking

Exhibit I: Superior Court – Tellez's Petition for Writ of HC

Exhibit J: People's Return to Petition for Writ of HC – Superior Court

Exhibit K: Petitioner's Denial – Superior Court

Exhibit L: Order to Show Cause on Petition for Writ of HC; Order Denying Petition for Writ of HC in Part. (May 4, 2021)

Exhibit M: Order Denying Petition for Writ of HC – Superior Court (September 15, 2021)

Exhibit N: Order Denying Petition for Writ of HC – Fourth District Court of Appeal, Division 1 (November 30, 2021)

Exhibit O: Published Opinion Denying Petition for Writ of HC – Fourth District Court of Appeal, Division 1 (October 18, 2022)

## **FACTUAL AND PROCEDURAL ARGUMENT**

On March 25, 2017, Victor Tellez consumed approximately a pint of vodka and went to the mall. While there, he approached three boys, laid down behind them, and ran his hand across the backs of two of the boys, ages 9 and 10. The boys got up quickly and walked away. Tellez began walking in the same direction where he then approached a girl, 13, from behind, wrapped his arms around her, and pulled her closer. When she turned around and faced Tellez, he let go of her, walked away, and sat down elsewhere. At this point she found a security guard and informed them of the incident. Tellez was then arrested for a misdemeanor violation of Penal Code section 647.6, subdivision (a)(1), annoying or molesting a child.

Tellez was arraigned on March 29, 2017, upon a three-count complaint. (Exhibit A: Complaint.) The Complaint charged three separate felony counts of lewd acts in violation of Penal Code section 288, subdivision (a). There were no enhancements on any of the charges. Tellez's maximum exposure in the case was 12 years.

At arraignment, the Office of the San Diego County Public Defender was appointed to represent Tellez. The case was assigned to a Deputy Public Defender as defense counsel.

At arraignment, a readiness hearing was set for April 7, 2017, and a preliminary hearing was set for April 12, 2017.

On December 11, 2017, Mr. Tellez, without effective assistance, entered a change of plea to one count of lewd act upon a child in violation of Penal Code section 288, subdivision (a). (Exhibit B: Change of Plea Form and Docket; Exhibit C: Change of Plea Transcript.) Tellez was not advised of the

potential for involuntary SVP commitment because of his guilty plea. (Exhibit D: Petitioner's Declaration; Exhibit B: Change of Plea Form and Docket; Exhibit C: Change of Plea Transcript.) If Tellez had been advised of possible SVP consequences, he would not have pled guilty. (Exhibit D: Petitioner's Declaration.)

Tellez was sentenced on the case by the Honorable Robert Amador on December 20, 2017, to three years in state prison. (Exhibit E: Sentencing Docket and Abstract of Judgment.)

On August 1, 2019, Mr. Tellez was released by the Department of Corrections and Rehabilitation and was immediately arrested by the San Diego County Sheriff's Department pursuant to an Order to Produce for Arraignment Pursuant to Welfare and Institutions Code section 6600 *et seq.* regarding the involuntary treatment of a sexually violent predator. (Exhibit F: Petition for Involuntary Treatment of a Sexually Violent Predator, Filed May 21, 2019; Exhibit G: Order to Produce.) Since then, Mr. Tellez has been in the physical custody of the San Diego County Sheriff's Department pending civil commitment proceedings under Welfare and Institutions Code section 6600 *et seq.* (Exhibit H: Sheriff's Booking.)

The Alternate Public Defender was appointed to represent Tellez in these proceedings after the Primary Public Defender declared a conflict on or around October 4, 2019.

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## **POINTS AND AUTHORITIES**

### **I. THIS HABEAS PETITION SHOULD BE GRANTED BECAUSE TELLEZ RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL THAT RESULTED IN A GUILTY PLEA DEPRIVING HIM OF HIS LIBERTY AND CONSTITUTIONAL RIGHTS**

The California and United States Constitutions guarantee that persons deprived of their liberty have the right to petition for a writ of habeas corpus. (U.S. Const., art. I, § 9; Cal. Const., art. I, § 11.) Any person unlawfully imprisoned or restrained of his liberty may prosecute a writ of habeas corpus to inquire into the cause of his imprisonment or restraint. (Cal. Pen. Code, § 1473, subd. (a).) A petitioner seeking such habeas corpus relief bears the burden of establishing that the judgment under which he is restrained is invalid, establishing facts in support of relief by a preponderance of the evidence. (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1132, quoting *In re Visciotti* (1996) 14 Cal.4th 325, 351.) In this petition, Mr. Tellez establishes that he is unlawfully restrained following a conviction that was sustained without the assistance of competent or effective defense counsel, resulting in prejudice and the deprivation of his liberty following a plea that was entered without adequate knowledge or intelligence about the ultimate consequences of his plea.

### **II. TELLEZ HAD A CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT ALL STAGES OF HIS PROCEEDINGS.**

In reviewing a petition for writ of habeas corpus, the court must ensure that defendants are incarcerated only after receiving competent representation of counsel. (*In re Vargas, supra*, 83 Cal.App.4th at p. 1139, quoting *In re Jones* (1996) 13 Cal.4th 552, 566.) This is based on the criminal defendants' constitutional right to effective assistance of counsel, entitling the accused "to a

reasonably competent attorney acting as a diligent, conscientious advocate.” (*In re Jones, supra*, 83 Cal.App.4th at p. 566, quoting *People v. Pope* (1979) 23 Cal.3d 412, 424; *Strickland v. Washington* (1984) 466 U.S. 668.) This right to diligent and competent counsel naturally applies to the pleading and plea-bargaining stages of a criminal proceeding, because when a defendant enters a guilty plea they may only do so after a knowing and intelligent waiver of their constitutional rights. (*In re Alvernaz* (1992) 2 Cal.4th 924, 933; *Brady v. United States* (1970) 397 U.S. 742, 748.) Such waiver can only be made with the assistance of competent counsel. (*In re Ibarra* (1983) 34 Cal.3d 277, 284.)

If a defendant contends that ineffective advice of counsel led to his guilty plea, the defendant first must establish ineffective assistance of counsel; that is, deficient performance by counsel that fell below the objective standard of reasonableness ensured by state and federal constitutions. (*People v. Mai* (2013) 57 Cal.4th 986, 1009; *In re Alvernaz, supra*, 2 Cal.4th at pp. 936-37.) Second, the defendant must show prejudice, which is demonstrated when there is “a reasonable probability that, but for counsel's errors, [Defendant] would not have pleaded guilty and would have insisted on going to trial.” (*Hill v. Lockhart*, (1985) 474 U.S. 52, 59; *In re Alvernaz, supra*, 2 Cal.4th at p. 934; *In re Vargas, supra*, 83 Cal.App.4th at p. 1140; *People v. Maguire*, (1998) 67 Cal.App.4th 1022, 1032.) When defense counsel’s performance is ineffective and prejudicial, resulting in an involuntary and unintelligent guilty plea, the defendant has received constitutionally defective assistance that demands a reversal of his conviction. (*Strickland v. Washington, supra*, 466 U.S. at p. 687; *In re Alvernaz, supra*, 2 Cal.4th at p. 934; *People v. Maguire, supra*, 67 Cal.App.4th at p. 1028.)

Moreover, a defendant entering a guilty plea must make knowing and voluntary waivers of his constitutional trial rights, intelligently understanding



the nature of the charge(s) against him and the consequences of entering into a plea agreement; otherwise the plea is invalid and unconstitutional. This is known as the *Boykin-Tahl* requirement, and a violation of the requirement renders the plea unconstitutional and demands a remedy of withdrawal – regardless of a showing of prejudicial impact. (*Boykin v. Alabama*, (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.)

Mr. Tellez received ineffective assistance of counsel at the trial court level that fell below the standard performance required of defense counsel. As a result of counsel's deficient performance, Mr. Tellez was never made aware of the possibility that once released from prison he could be deprived of his liberty and freedom for the rest of his life under the SVP Act. This precluded Tellez's ability to enter a knowing or intelligent change of plea in his case, in violation of *Boykin-Tahl*. If Tellez were assisted by competent counsel, he would not have given up his important constitutional right to go to trial. Instead, Mr. Tellez was left completely unaware that a guilty plea could result in indefinite commitment, and he was sentenced to state prison with the erroneous believe that his future freedom was guaranteed.

### **III. TELLEZ RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN DEFENSE COUNSEL FAILED TO PROPERLY ADVISE BEFORE ADMISSION OF THE PLEA.**

Although the decision to plead guilty is ultimately made by the defendant, it is his counsel—not the defendant—who is particularly qualified to make an informed evaluation of the proffered plea bargain. (*People v. Maguire, supra*, 67 Cal.App.4th at p. 1028; *People v. Stanworth* (1974) 11 Cal. 3d 588, 611.) It is thus expected that a criminal defendant relies on his counsel's independent evaluation of the charges, applicable law, evidence, and risks and probable outcome of trial. (*People v. Maguire, supra*, 67 Cal.App.4th

at p. 1028.) In order to provide their client with this independent evaluation, defense counsel has an obligation to investigate all defenses, explore the factual bases for defenses, review the applicable law as to each charge and allegation, be acquainted with the contents of the case file, and accurately advise the client of all aspects of the case. (*Ibid.*; *In re Vargas, supra*, 83 Cal.App.4th at p. 1139.) If a viable defense emerges from counsel's research and investigation, counsel must then take appropriate steps to challenge the legal sufficiency of those counts for which the defense applies, keeping the defendant apprised of those facts all the while. (*People v. Maguire, supra*, at p. 1030.)

A. Defense Counsel Failed to Advise Tellez of the Possibility of the Severe Sanction of Involuntary Treatment.

It is well established that for a guilty plea to be valid, the accused must understand the nature of the charge(s) against him and the consequences of a guilty plea and, knowingly, intelligently and voluntarily waive his constitutional rights. (*Boykin v. Alabama, supra*, 395 U.S. 238; *In re Tahl, supra*, 1 Cal.3d 122.) In *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, the Supreme Court of California held that "[i]n all guilty plea and submission cases the defendant shall be advised of the direct consequences of conviction." (at P. 605.) A 'direct' consequence is one that has "a definite, immediate, and largely automatic effect on the range of the defendant's punishment." (*Torrey v. Estelle* (9th Cir.1988) 842 F.2d 234, 236.) Alternatively, a defendant need not be advised of 'collateral' consequences which are those that do not "inexorably follow" from a conviction of the offense involved in the plea. (*People v. Crosby* (1992) 3 Cal.App.4th 1352, 1355.) However, as the Supreme Court noted in *Padilla*, the Court has "never applied a distinction between direct and collateral consequences to define the cope of constitutionally 'reasonable professional

assistance’ required under *Strickland*.” (*Padilla, supra* 559 U.S. at p. 365, citing *Strickland v. Washington* (1984) 466 U.S. 668, 689.)

The categorization of consequences between ‘direct’ and ‘collateral’ has long been debated. Historically, the possibility of commitment was a consequence that the defendant had to be made aware of. In giving examples of direct consequences the court in *Bunnell* listed, “the permissible range of punishment provided by statute, registration requirements, if any . . . , and, in appropriate cases the possibility of commitment pursuant to Welfare and Institutions Code, sections 3050, 3051, or 6302.” (*Bunnell v. Superior Court, supra*, 13 Cal.3d at p. 605.) Welfare and Institutions Code sections 3050 and 3051 related to the commitment of narcotics addicts (Repealed by Stats.2012, c. 41 (S.B.1021), § 119, operative Jan. 1, 2015.) Welfare and Institutions Code section 6302 related to judicial commitments of mentally disordered sex offenders and was the predecessor to section 6600. (Repealed by Stats.1981, c. 928, p. 3485, § 2, operative January 1, 1982.) Following similar reasoning, the court in *People v. Lomboy* (1981) 116 Cal.App.3d 67, held that a defendant who pleads not guilty by reason of insanity must be advised to the maximum possible length of commitment. “We hold advisement of the disparity in the lengths of possible custodial consequences is essential to ensure a defendant knows the true potential of such a plea even though she may be generally aware ‘some’ institutionalization is possible.” (*Id.* at p. 69.) The court looked at collateral consequences as two categories: “those which are noncustodial and nonpenal in nature and those which are custodial in nature but which may be imposed only after future volitional misconduct on the part of a defendant.” (*Id.* at p. 72.) Because there the defendant was “subject to possible confinement in a mental institution for the rest of her natural life for causes over which she has no control, to wit: her mental condition” the court allowed Lomboy to withdraw

her plea. Commitment, whether for insanity or SVP, is a custodial consequence, based on a mental condition, and is a significant factor in whether a defendant decides to plead guilty or not.

In 1998, Thomas Moore was convicted of committing a lewd act on a child under the age of 14. He sought to withdraw this plea on the grounds that the trial court had not advised him that he might be subject to additional confinement under the Sexually Violent Predator act. (*People v. Moore, supra*, 69 Cal.App.4th 626.) The court in Moore’s case reasoned that there are a number of steps, after an initial screening, that must be taken before one can be committed pursuant to section 6600 and it is therefore not “‘immediate’ or ‘inexorable.’” (*Id.* at p. 632.) The Court further went on and compared SVP consequences to immigration consequences stating that, “SVP Act proceedings are more analogous to deportation than the commitment proceedings Moore cites because an SVP commitment, like deportation, depends on additional findings by a different tribunal after the defendant has been sentenced.” (*People v. Moore, supra*, 69 Cal.App.4th at p. 662.) The court therefore held that an advisal as to the possibility of SVP commitment is not necessary because, “[a]ny such determination would require additional steps and would depend on additional findings which would not be controlled by Moore’s plea and admissions herein.” (*Id.* at p. 632.)

The comparisons made in the *Moore* decision, however, were altered by the 2010 decision by the United States Supreme Court in the case of *Padilla v. Kentucky*. (*Padilla v. Kentucky* (2010) 599 U.S. 356.) This decision recognized that deportation proceedings themselves, regardless of the result, are a direct result of a criminal conviction. The Court in *Padilla* found that the possibility of deportation is a consequence to which a defendant must be advised about before a change of plea. (*Id.*) The Court noted that, “[a]lthough removal proceedings

are civil, deportation is intimately related to the criminal process, which makes it uniquely difficult to classify as either a direct or a collateral consequence.” (*Id.* at P. 357.) The United States Supreme Court found that where deportation is clear, a defendant must be advised of that. Despite the need for additional findings, the Supreme Court additionally found that even the possibility of deportation is a significant consequence and something that a defendant must be advised of before a change of plea.

The United States Supreme Court recently extended the *Padilla* ruling in *Lee v. United States*, (2017) 137 S.Ct. 1958, where the defendant was a lawful permanent resident and was charged with a drug offense. Lee told his retained attorney several times that he was not a citizen, and he repeatedly asked if he would be deported if he entered a guilty plea. The attorney told Lee that he would not be deported if he pleaded guilty. Based on that assurance, Lee pleaded guilty only to find out that he pleaded guilty to an offense that resulted in his mandatory deportation. (*Lee, supra*, 137 S.Ct. at pp. 1962-63.) In reversing Lee’s conviction, the United States Supreme Court commented:

[I]n this case counsel’s ‘deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself.’ [Citation.] When a defendant alleges his counsel’s deficient performance led him to accept a guilty plea rather than go to trial, we do not ask whether, had he gone to trial, the result of that trial ‘would have been different’ than the result of the plea bargain. That is because, while we ordinarily ‘apply a strong presumption of reliability

to judicial proceedings,’ ‘we cannot accord’ any such presumption ‘to judicial proceedings that never took place.’ [Citation.] (*Lee, supra*, 137 S.Ct., at p. 1965.)

The California Supreme Court has yet to reconcile *Padilla* and its progeny to SVP commitments. Recently, however, in *People v. Patterson*, (2017) 2 Cal.5th 885, the Supreme Court of California held that advisement that a criminal conviction “may” have adverse immigration consequences does not bar a noncitizen defendant from seeking to withdraw a guilty plea on that basis. In so doing the court stated, “[t]he court might consider that justice would not be promoted if an accused, willing to accept a misdemeanor conviction and probationary status, cannot by timely action revoke his election when he thereafter discovers that much more serious sanctions, whether criminal or civil, direct or consequential, may be imposed.” (*Id.* at p. 894.)

In contrast to *Moore*, the Fourth District Court of Appeal, Division 1, found the analogy between deportation and SVP proceedings “inapt,” despite heavily relying on *Moore* to support its holding that there is no duty to advise of SVP consequences. (*People v. Codhina* (2021) 71 Ca.App.5th 1047, 1065.)

Civil commitment based on SVP law is an extremely “serious sanction” as it incapacitates an individual for an indefinite amount of time. Further, the *Moore* Court likened SVP consequences to immigration consequences by directly stating as much. (See *Moore, supra*, 69 Cal.App.4th at p. 662.) SVP proceedings are just as inextricably linked to criminal convictions as deportation proceedings. If a defendant can withdraw a guilty plea on the basis of a “more serious sanction” like immigration consequences, it would stand to reason that a defendant facing the possibility of a lifetime SVP commitment must be advised

of that possibility for him to enter a knowing guilty plea. The remedy for such failure to advise is withdrawal of the guilty plea.

**IV. TELLEZ SUFFERED PREJUDICE AS A RESULT OF DEFENSE COUNSEL’S INEFFECTIVE ASSISTANCE.**

In addition to establishing that defense counsel did not meet the threshold standards of competency, Tellez must establish that defense counsel’s incompetence resulted in prejudice to his case. (*In re Alvernaz, supra*, 2 Cal.4th at p. 936.) The Supreme Court has held that prejudice is established when there is “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (*Strickland v. Washington, supra*, 466 U.S. at p. 669.) In the context of plea deals, prejudice exists when there is “a reasonable probability that, but for counsel’s errors, [Defendant] would not have pleaded guilty and would have insisted on going to trial.” (*Hill v. Lockhart, supra*, 474 U.S. at p. 59; *In re Alvernaz, supra*, 2 Cal.4th at p. 934; *In re Vargas, supra*, 83 Cal.App.4th at p. 1140; *People v. Maguire, supra*, 67 Cal.App.4th at p. 1032.) As stated in *Lee, supra*, the likelihood of prevailing at said trial is not relevant to these findings. (*Lee, supra*, 137 S.Ct. 1965.)

Tellez would have proceeded to trial had defense counsel been effective at the trial court level. Tellez would not have entered a guilty plea had he been advised of possible SVP consequences. (Exhibit D: Petitioner’s Declaration.) The maximum penalty that Mr. Tellez faced after trial based on the charges on the complaint was twelve years in state prison. (Exhibiti A: Complaint.) Mr. Tellez was guaranteed three years in state prison in exchange for his guilty plea prior to trial. His attorney advised him that the maximum that he would serve was three years. (Exhibit B: Change of Plea Form and Docket.) However, the reality was and is that Mr. Tellez’s freedom was never guaranteed because of

the potential of a lifetime commitment under the SVP Act. The failure to advise of such a significant consequence robbed Mr. Tellez of making a knowing, intelligent, and voluntary decision regarding his fundamental constitutional rights.

Having obtained ineffective assistance in the plea-bargaining stages of the case that fell below the standard of prevailing professional norms, Tellez suffered prejudice of a constitutional magnitude that warrants withdrawal of his guilty plea and a reversal of his conviction.

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## CONCLUSION

Mr. Tellez's defense counsel was ineffective, because counsel neither diligently nor competently advocated for the protection of his constitutional rights. Defense counsel was ineffective because he failed to advise Mr. Tellez of the particularly severe penalty of possible SVP commitment enmeshed with criminal convictions prior to entry of his guilty plea. As a result, Mr. Tellez was pushed through his criminal proceedings entirely unable to make a voluntary, knowing, or intelligent decision regarding a plea of guilty. Were Tellez afforded effective counsel, he would have proceeded to trial or advanced plea negotiations to a more favorable resolution of the case. Deprived of such assistance, Mr. Tellez was prejudiced by the involuntary and unknowing outcome of his plea bargain, which was entered in violation of his Sixth Amendment rights. Accordingly, Tellez asks this Court to vacate his convictions and set further hearings so that the case may proceed with effective counsel.

DATED: 10/27/2022 \_\_\_\_\_

Respectfully submitted,

MEGAN MARCOTTE, Chief Deputy  
Office of the Alternate Public Defender

Anthony Parker Digitally signed by Anthony Parker  
Date: 2022.10.27 16:40:49 -07'00'

ANTHONY B. PARKER  
Deputy Alternate Public Defender

Attorneys for the Petitioner  
VICTOR TELLEZ

## **CERTIFICATE OF WORD COUNT**

I, ANTHONY PARKER, hereby certify that based on the software in the word processor program, the word count for this document is 6,064 words.

Dated: October 27, 2022

Respectfully submitted,

By: Anthony Parker Digitally signed by Anthony Parker  
Date: 2022.10.27 16:40:36 -07'00'  
Anthony B. Parker  
Deputy Public Defender

## **PROOF OF SERVICE**

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**Case Name: In Re Tellez**  
**Case No.**  
**Trial Court No.:**

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I, the undersigned, say: I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My office address is 451 “A” Street, Suite 1200, San Diego, California 92101.

On the date of execution of this document, I served the foregoing ***PETITION FOR WRIT OF HABEAS CORPUS and SUPPORTING EXHIBITS***, by personally delivering true and correct copies thereof to each of the following at the addresses indicated:

The Hon. Roderick Shelton  
Judge of the Superior Court  
C/O JUDICIAL SERVICES  
220 W. Broadway  
San Diego, CA 92101  
*(personal service)*

California Attorney General  
Attn: Appellate Division  
600 W. Broadway, Suite 1800  
San Diego, CA 92101  
Phone: (619) 645-2001  
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Summer Stephan  
San Diego County District Attorney  
Attn: Appellate Division  
330 W. Broadway, 8<sup>th</sup> Floor  
San Diego, CA 92101  
Phone: (619) 531-3544  
*(personal service)*

Mr. Victor Tellez, Petitioner  
*(through counsel)*

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

Executed this \_\_\_\_\_ day of October, 2022 at San Diego, California.

\_\_\_\_\_  
Declarant

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# EXHIBIT A



IN CUSTODY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
EAST COUNTY DIVISION**

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,  
  
v.  
  
VICTOR RAUL TELLEZ,  
*dob 07/28/58, Booking No. 17118961A;*  
Defendant

CT No. CE369196  
DA No. MBO145

CHILD ABUSE

COMPLAINT-FELONY



INFORMATION

Date: \_\_\_\_\_

**PC296 DNA TEST STATUS SUMMARY**

**Defendant**

TELLEZ, VICTOR RAUL

**DNA Testing Requirements**

DNA sample has been previously provided

**CHARGE SUMMARY**

Count	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
1	PC288(a) TELLEZ, VICTOR RAUL	Felony	3-6-8		
2	PC288(a) TELLEZ, VICTOR RAUL	Felony	3-6-8		
3	PC288(a) TELLEZ, VICTOR RAUL	Felony	3-6-8		

PC1054.3

INFORMAL REQUEST FOR DISCOVERY

The undersigned, certifying upon information and belief, complains that in the County of San Diego, State of California, the Defendant(s) did commit the following crime(s):

## **CHARGES**

### **COUNT 1 - LEWD ACT UPON A CHILD**

On or about March 25, 2017, VICTOR RAUL TELLEZ did willfully and lewdly commit a lewd and lascivious act upon and with the body and any part and member thereof of Joel T., a child under the age of fourteen years, with the intent of arousing, appealing to and gratifying the lust, passions and sexual desires of the said defendant and the said child (to wit: hand to back), in violation of PENAL CODE SECTION 288(a).

### **COUNT 2 - LEWD ACT UPON A CHILD**

On or about March 25, 2017, VICTOR RAUL TELLEZ did willfully and lewdly commit a lewd and lascivious act upon and with the body and any part and member thereof of Alfredo S., a child under the age of fourteen years, with the intent of arousing, appealing to and gratifying the lust, passions and sexual desires of the said defendant and the said child (to wit: hand to back), in violation of PENAL CODE SECTION 288(a).

### **COUNT 3 - LEWD ACT UPON A CHILD**

On or about March 25, 2017, VICTOR RAUL TELLEZ did willfully and lewdly commit a lewd and lascivious act upon and with the body and any part and member thereof of Zakyra W., a child under the age of fourteen years, with the intent of arousing, appealing to and gratifying the lust, passions and sexual desires of the said defendant and the said child (to wit: hand to waist), in violation of PENAL CODE SECTION 288(a).

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NOTICE: Any defendant named on this complaint who is on criminal probation in San Diego County is, by receiving this complaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for a dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and simultaneously, the People are seeking a revocation of the defendant's probation, on any and all such probation grants, utilizing the same evidence, at the preliminary hearing. Defenses to either or both procedures should be considered and presented as appropriate at the preliminary hearing.

NOTICE: Any defendant named on this complaint who is on Mandatory Supervision in San Diego County is, by receiving this complaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for a dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and simultaneously, the People are seeking a revocation of the defendant's Mandatory Supervision pursuant to Penal Code Sections 1170(h)(5)(B) and 1203.2, on any and all such grants, utilizing the same evidence, at the preliminary hearing. Defense to either or both procedures should be considered and presented as appropriate at the preliminary hearing.

Pursuant to PENAL CODE SECTION 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by PENAL CODE SECTION 1054.3.

MANDATORY STATE PRISON INCARCERATION: An executed sentence for a felony shall be served by defendant VICTOR RAUL TELLEZ in state prison pursuant to PENAL CODE SECTIONS 1170(f) and (h)(3).

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT, CASE NUMBER CE369196, CONSISTS OF 3 COUNTS.

Executed at City of El Cajon, County of San Diego, State of California, on March 29, 2017.

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COMPLAINANT

---

INFORMATION

BONNIE M. DUMANIS  
District Attorney  
County of San Diego  
State of California  
by:

---

Date

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Deputy District Attorney

## EXHIBIT B



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

☐ Central Division ☒ East County Division ☐ North County Division ☐ South County Division

PEOPLE vs. **TELLEZ VICTOR** R STATUS: **CUST \$ 300,000** ☐ BB ☐ CB (Y/N)  
CASE # **CE369196** PROS. # \_\_\_\_\_ DOB: **072858** BKG # **17118961** CTS **262** days \_\_\_\_\_ hrs.  
DATE: **12/11/17** AT **0830** DEPT. # **002** INTERP: \_\_\_\_\_ ☐ Spanish ☐ Sworn ☐ Oath on File  
JUDGE/COMM/TEMP JUDGE: **DANIEL G. LAMBORN** ☐ STIP. FILED REPORTER: \_\_\_\_\_  
CLERK: **Sream** CSR # / COUNTER #: **Joyce Ives, CSR#12103**

CHARGE(S): **ct. 1 PC288(A) ct. 2 PC288(A) ct. 3 PC288(A)**

FUTURE DATES: **PE 01-10-18 @ 8:40 D-11** ☐ CONFIRMED ☒ VACATED  
**C. Demauregne** **P. DEFENDERS D. Thompson** **11-20 50**  
Attorney for the People (DDA/DCA/DAG) ☐ Supervised Cert. Legal Intern Attorney for Defendant (PD/APD/OAC/Retained/Counseling) ☐ Supervised Cert. Legal Intern  
DEFENDANT: ☒ PRESENT ☐ VIA AUDIO VIDEO ☐ SELF REPRESENTED ☐ NOT PRESENT ☐ NOT PRODUCED ☐ FAILED TO APPEAR

Case called for ☐ FTA ☐ Arraignment ☐ Bail Review ☒ Readiness/DWT ☐ Jury Trial ☐ Preliminary Examination ☐ Motion  
☐ DEJ ☒ Full ☐ Limited Protective Order Expires **3-29-20** Protected Party: **Alfredo S. Joelt, Zakya W.**  
☐ Warrant Ordered/Issued on \_\_\_\_\_ ☐ Held to today ☐ Cleared ☐ Outstanding. ☐ Bail Bond # \_\_\_\_\_ \$ \_\_\_\_\_ forfeited.

**CASE TRANSFERRED TO DEPT. \_\_\_\_\_ TIME ESTIMATE: \_\_\_\_\_**  
Complaint amended ☐ by interlineation to read:  
☐ Amended ☐ Amendment to ☐ complaint filed ☐ charging ☐ adding ☐ VC23103 (a) pursuant to VC23103.5 ☐ VC22107, VC21658(a), PC647(f)  
☐ as INFRACTION(S) pursuant to PC17(d)(2). ☐ other: \_\_\_\_\_  
☐ Defendant advised of and waives the right to a **separate and conflict-free attorney / interpreter** for this court appearance.  
☐ Defendant duly arraigned and advised of the **constitutional and statutory rights** as indicated on the reverse side of this minute order\*.  
☐ Acknowledgment of advisal of constitutional rights signed and filed. ☐ Defendant has received copy of complaint.  
☐ Defendant waives reading of complaint. ☐ Def. states **true name** is \_\_\_\_\_ ☐ on complaint [ \_\_\_\_\_ ] line)  
☒ **DEFENDANT PLEADS NOT GUILTY** and denies any priors/allegations/separate convictions alleged ☐ on amended complaint.  
Defendant **WAIVES**: ☐ time for speedy trial ☐ 10 day/60 day statutory time for preliminary hearing ☐ personal presence ☐ per PC977  
☐ bail review ☐ jury trial ☐ preliminary hearing

**COUNSEL** ☐ MOTION FOR APPOINTED ATTORNEY ☐ Granted ☐ Public Defender ☐ Alternate Public Defender ☐ Office of Assigned Counsel  
Atty: \_\_\_\_\_ ☐ Re-appointed ☐ Denied ☐ Referred to Near Indigent Panel ☐ Defendant to retain counsel.  
☐ Motion for self-representation is ☐ granted ☐ denied. ☐ Faretta/Lopez Waiver signed & filed. ☐ OAC appointed - legal runner/reasonable ancillary services.

**CONVICTION** ☐ Def. is sworn and examined. ☒ Defendant withdraws any previously entered plea.  
**DEFENDANT PLEADS:** ☒ GUILTY ☐ NO CONTEST to: **ct. 2 PC 288(a)** ☐ VC23152(a) / (b)  
☐ Admits \_\_\_\_\_ separate conviction(s) alleged/  
☐ Charges contained in amended/amendment to complaint. ☐ VC23103(a) per VC23103.5 ☐ as a lesser included offense of \_\_\_\_\_ allegation(s)  
☒ On motion of Court/People/Defendant remaining count(s) is/are **DISMISSED**. Allegation(s)/Prior(s) remaining is/are **STRICKEN** ☐ FOJ ☒ VOP  
☒ Plea form executed and filed ☐ People vs. West ☐ BAC: \_\_\_\_\_  
☒ Court finds a knowing and intelligent waiver of constitutional rights and factual basis for the plea.  
**ADVISALS** given by the court: ☐ Theft - PC666 ☐ DUI - VC23593 ☒ Consequences of Conviction - PC1016.5  
**WAIVERS**: ☐ Arbuckle ☐ Blakely ☐ Cruz ☐ Harvey ☐ Appeal Rights ☒ Non-Bio. Evidence Disposal ☐ Time for sentencing, see JUDGMENT MINUTES.  
☐ PC1210 ☐ Drug Court ☐ accepted ☐ declined.  
☐ Stipulated bindover. ☒ Case certified as a general jurisdiction matter. ☐ Complaint deemed the Information.  
☐ Defendant to provide DNA database samples as directed by Sheriff or Probation Dept. (PC296).

**MOTION** for \_\_\_\_\_ by ☐ People ☐ Defendant ☐ with ☐ without objection ☐ GRANTED ☐ DENIED.  
**PC1000** ☐ Defendant's motion for ☐ reinstatement to ☐ PC1000 granted as to count(s) \_\_\_\_\_, for \_\_\_\_\_ mo./ yrs. ☐ New term  
☐ Time waived for sentencing ☐ S.D. Rescue Mission Program ☐ Enroll by \_\_\_\_\_ Comply with all directions of Assessor.  
☐ \$ \_\_\_\_\_ DEJ Admin Fees (PC1001.16(a) and PC1001.90) ☐ Forthwith ☐ By \_\_\_\_\_  
☐ Defendant has satisfactorily COMPLETED the DEJ Program, previously entered plea to count(s) \_\_\_\_\_ set aside and charges dismissed.  
☐ Defendant has FAILED to satisfactorily perform in the DEJ Program. ☐ PC1000 set aside and any unpaid fees pertaining thereto deleted.  
☐ Court makes a finding of guilt to the charge(s) pled. ☐ Time waived for sentencing, see JUDGMENT.

**REFERRALS** Report ☐ forthwith ☐ by \_\_\_\_\_ to ☐ Assessment Unit ☐ Probation Department ☐ Probation to interview.  
☐ Pre-sentence ☐ Mini ☐ Supplemental ☐ Psych. ☐ Limited re: Drugs / Alcohol / Domestic Violence / Anger Management / Restitution Report Ordered.  
☒ Pre-sentence report waived. ☐ Court Collections ☐ for payment of attorney fees \*\* \$ \_\_\_\_\_ ☐ Indigent as to attorney fees.  
\*\* The court finds that the defendant has the ability to repay the County of San Diego for the costs of court appointed attorney fees.

**HEARINGS** Set/cont. on motion of ☐ People ☐ Defense ☐ Opposed ☐ Unopposed ☐ By Stipulation, \_\_\_\_\_ ☐ Statutory time is **WAIVED**  
**DEFENDANT IS ORDERED TO APPEAR for** \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
☐ Re: Attorney \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_ ☐ Motion/PC1538.5 \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
☐ Arraignment \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_ ☐ Jury / Court Trial \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
☐ Bail Review \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_ ☐ Sentencing \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
☐ Readiness/DWT \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_ ☒ Prob. Hrg. & Sent **12-20-17** at **145** in Dept. **2**  
☐ Prelim Exam \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_ ☐ DEJ ☐ Drug Ct \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_  
Time Estimate: \_\_\_\_\_ hr/day Days remaining: \_\_\_\_\_ Set with case(s): \_\_\_\_\_

**MENTAL HEALTH** ☐ Proceedings suspended pursuant to PC1368. Mental competency examination on \_\_\_\_\_ at \_\_\_\_\_ by Forensic  
Psychiatry Clinic. Females - Room 1003, Central Division; Males - Central Detention Facility. Hearing on \_\_\_\_\_ at \_\_\_\_\_ in Dept. \_\_\_\_\_ of the  
Central Division. ☐ The Sheriff is ordered to transport the defendant to and from the examination and hearing stated above.

**OTHER** ☐ Verbal notice of license suspension (DL 310) signed. ☐ Fingerprint form filed.  
☐ Book & Release - Report on \_\_\_\_\_ at \_\_\_\_\_ to ☐ Central ☐ Vista ☐ Las Colinas Detention Facility.

**CUSTODY STATUS** Defendant ☒ **REMAINED** to custody of Sheriff ☒ without bail ☐ with bail set at / increased to / reduced to \$ \_\_\_\_\_  
☐ PC1275.1 HOLD. ☐ Pretrial Services Report Ordered re: SOR ☐ Refer to CPAC.  
☐ **REMAINS AT LIBERTY** ☐ **RELEASED**: ☐ on bail previously posted. ☐ after booking ☐ DEJ ☐ OR ☐ SUPERVISED OR - comply with P.T.S. conditions  
same terms and conditions ☐ to an authorized representative of: \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_  
Release Conditions: ☐ Attend \_\_\_\_\_ self-help mtgs. per week and submit proof at each court hearing. ☐ Abstain from alcohol.  
☐ Not use or possess any controlled substances without a valid prescription. ☐ Not possess narcotic paraphernalia.  
☐ Def. waives **4th amendment rights** and agrees to submit person, vehicle, place of residence, property, personal effects to search at any time with or without a  
warrant, and with or without reasonable cause, when required by a Probation Officer or other law enforcement officer ☐ until revoked. ☐ for the duration of  
deferred entry of judgment. ☐ Have no contact with / stay away from \_\_\_\_\_ ☐ Protective Order issued.  
☒ Previously ordered: ☐ 4th **WAIVER** ☐ continues ☐ deleted ☒ **PROTECTIVE ORDER** ☒ continues ☐ deleted.  
**WARRANT** ☐ Arrest ☐ Bench ☐ Warrant ordered ☐ Bail set at \$ \_\_\_\_\_ ☐ No Bail. ☐ Counsel reports no contact with defendant.  
☐ Schedule for hearing. ☐ Mandatory appearance. ☐ Night service authorized. ☐ Cash bail may be forfeited. ☐ **ISSUED ON:** \_\_\_\_\_  
☐ HOLD issuance to DATE ABOVE. ☐ Warrant previously ordered/issued ☐ remains outstanding ☐ rescinded ☐ **RECALLED ON:** \_\_\_\_\_  
☐ Affidavit requested. Due by: \_\_\_\_\_  
**BAIL** is ☐ exonerated ☐ forfeited ☐ Fine from bail, refund balance. ☐ Declaration of non-collusion/ re-assumption of liability filed.  
☐ Bail forfeiture is set aside and bond is ☐ reinstated ☐ exonerated ☐ upon payment of court cost \$ \_\_\_\_\_ within 30 days ☐ cost waived  
☐ Bond #: \_\_\_\_\_ Bond \$ \_\_\_\_\_ Bond Co. \_\_\_\_\_

Date: \_\_\_\_\_ ATTEST A TRUE COPY, Clerk of the Superior Court by \_\_\_\_\_ Deputy  
Distribution by: **gc** on \_\_\_\_\_ to: Jail Def. Atty. Pros. Prob. R&R Interpreter Acct. Assessment Other: \_\_\_\_\_  
SDSC CRM-150 (Rev. 1/14)

**MISDEMEANOR/FELONY - PRE-DISPOSITION MINUTES**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		Clerk of the Superior Court DEC 11 2017 By: S. Bream, Clerk EAST COUNTY DIVISION
PEOPLE vs <u>Victor Teller</u> Defendant		
PLEA OF GUILTY/NO CONTEST – FELONY		Court Number: <u>CE369196</u> DA Number: <u>MB0145</u>

I, the defendant in the above-entitled case, in support of my plea of Guilty/No Contest, personally declare as follows:

1. Of those charges now filed against me in this case, I plead Guilty to the following offenses and admit the enhancements, allegations and prior convictions as follows: ☒

COUNT	CHARGE	ENHANCEMENT/ALLEGATION
<u>3</u>	<u>PC 288(a)</u>	

PRIORS: (LIST ALLEGATION SECTION, CONVICTION DATE, COUNTY, CASE NUMBER, AND CHARGE)		

2. I have not been induced to enter this plea by any promise or representation of any kind, except: (State any agreement with the District Attorney.) ☒  
Dismiss balance, stip 3 years state prison
3. I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me. ☒
4. I understand that a plea of No Contest is the same as a plea of Guilty for all purposes. ☒
5. I am sober and my judgment is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours. ☒

CONSTITUTIONAL RIGHTS

- 6a. I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer or the Court will appoint a lawyer for me if I cannot afford one. ☒

I understand that as to all charges, allegations and prior convictions filed against me, and as to any facts that may be used to increase my sentence, now or in the future, I also have the following constitutional rights, which I now give up to enter my plea of guilty/no contest:

- 6b. I have the right to a speedy and public trial by jury. I now give up this right. ☒
- 6c. I have the right to confront and cross-examine all the witnesses against me. I now give up this right. ☒
- 6d. I have the right to remain silent (unless I choose to testify on my own behalf). I now give up this right. ☒
- 6e. I have the right to present evidence in my behalf and to have the court subpoena my witnesses at no cost to me. I now give up this right. ☒

Defendant: Victor Teller	CASE NUMBER: CE 369196
--------------------------	------------------------

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

- 7a. I understand that I may receive this maximum punishment as a result of my plea: 3 years imprisonment or imprisonment plus a term of mandatory supervision; \$29,500 fine; and 4 years parole or post-release community supervision, with return to custody for every violation of a condition thereof. If I am not sentenced to imprisonment, I may be granted probation for a period up to 5 years or the maximum term of imprisonment, whichever is greater. As conditions of probation I may be given up to a year in jail custody, plus the fine, and any other conditions deemed reasonable by the Court. I understand that if I violate any condition of probation I can be sentenced to imprisonment for the maximum term as stated above. ☒
- 7b. I understand that I must pay a restitution fine (\$200 - \$10,000), that I will also be subject to a suspended fine in the same amount, and that I must pay full restitution to all victims. ☒
- 7c. I understand that my conviction in this case will be a serious/violent felony ("strike") resulting in mandatory denial of probation, substantially increased penalties, and a term in State Prison in any future felony case. ☒
- 7d. I understand that if I am not a U.S. citizen, this plea of Guilty/No Contest may result in my removal/deportation, exclusion from admission to the U.S. and denial of naturalization. Additionally, if this plea is to an "Aggravated Felony" listed on the back of this form, then I will be deported, excluded from admission to the U.S., and denied naturalization. ☒
- 7e. I understand that my plea of Guilty or No Contest in this case could result in revocation of my probation, mandatory supervision, parole or post-release supervision in other cases, and consecutive sentences. ☒
- 7f. My attorney has explained to me that other possible consequences of this plea may be:  
(Circle applicable consequences.) ☒
- |  |   |  |
|--|---|--|
| (1) Consecutive sentences                                | (9) Prison prior                                      | a. Limited local credits                   |
| (2) Loss of driving privileges                           | (10) Mandatory imprisonment                           | (290/serious/prior)                        |
| (3) Commitment to Youth Authority                        | (11) Mandatory State Prison                           | b. Violent Felony (No credit or max. 15%)  |
| (4) Lifetime registration as an arson / sex offender     | (12) Presumptive imprisonment                         | c. Prior Strike(s) (No credit to max. 20%) |
| (5) Registration as a narcotic / gang offender           | (13) Presumptive State Prison                         | d. Murder on/after 6/3/98 (No credit)      |
| (6) Cannot possess firearms or ammunition                | (14) Sexually Violent Predator Law                    | (17) Loss of public assistance             |
| (7) Blood test and saliva sample                         | (15) Possible/Mandatory hormone suppression treatment | (18) AIDS education program                |
| (8) Priorable (increased punishment for future offenses) | (16) Reduced conduct/work credits                     | (19) Other: _____                          |
8. (Appeal Rights) I give up my right to appeal the following: 1) denial of my 1538.5 motion, 2) issues related to strike priors (under PC sections 667(b)-(i) and 1170.12), and 3) any sentence stipulated herein. ☒
9. (Harvey Waiver) The sentencing judge may consider my prior criminal history and the entire factual background of the case, including any unfiled, dismissed or stricken charges or allegations or cases when granting probation, ordering restitution or imposing sentence. ☒
10. (Blakely waiver) I understand that as to any fact in aggravation that may be used to increase my sentence on any count or allegation to the upper or maximum term provided by law, I have the constitutional rights listed in paragraphs 6b-6e. I now give up those rights and agree that the sentencing judge may determine the existence or non-existence of any fact in aggravation, either at the initial sentencing or at any future sentencing in the event my probation is revoked. ☒
11. (Cruz Waiver) Negotiated Disposition pursuant to PC 1192.5: I understand that if pending sentencing I am arrested for or commit another crime, violate any condition of my release, or willfully fail to appear for my probation interview or my sentencing hearing, the sentence portion of this agreement will be cancelled. I will be sentenced unconditionally, and I will not be allowed to withdraw my guilty/no contest plea(s). ☒
12. (Arbuckle Waiver) I give up my right to be sentenced by the judge who accepts this plea. ☒
13. (Probation Report) I give up my right to a full probation report before sentencing. ☒



Defendant: <u>Vicki Teller</u>	CASE NUMBER: <u>CE369196</u>
--------------------------------	------------------------------

14. **(Evidence Disposal Waiver)** I give up my interest in all non-biological property/evidence impounded during the investigation of this case except \_\_\_\_\_ and acknowledge that if I listed any property here, I must also file a claim with the impounding agency within 60 days after pronouncement of judgment or my ability to make a claim will expire. VT

**PLEA**

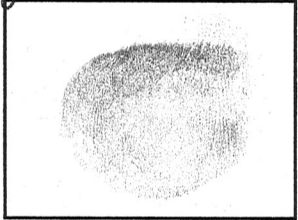
15. I now plead Guilty/No Contest and admit the charges, convictions and allegations described in paragraph #1, above. I admit that on the dates charged, I: (Describe facts as to each charge and allegation)  
willfully and lewdly committed a lewd & lascivious act upon & with the body part (the back) of Zachary W. a child under 14 years of age with the intent of arousing my sexual desires. VT

16. I declare under penalty of perjury that I have read, understood, and initialed each item above and any attached addendum, and everything on the form and any attached addendum is true and correct. VT

Dated: 12-11-17 Defendant's Signature Vicki Teller

Defendant's Address: \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_



**Defendant's Right Thumb Print**  
**ATTORNEY'S STATEMENT**

I, the attorney for the defendant in the above-entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges and possible defenses with the defendant, and the consequences of this plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his/her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Dated: 12-11-17 David A. Thompson [Signature]  
(Print Name) Attorney for Defendant (Signature)  
(Circle one: PD / APD / OAC / RETAINED)

**INTERPRETER'S STATEMENT (If Applicable)**

I, the sworn \_\_\_\_\_ language interpreter in this proceeding, truly translated for the defendant the entire contents of this form and any attached addendum. The defendant indicated understanding of the contents of this form and any addendum and then initialed and signed the form and any addendum.

Dated: \_\_\_\_\_  
(Print Name) Court Interpreter (Signature)

**PROSECUTOR'S STATEMENT**

The People of the State of California, plaintiff, by its attorney, the District Attorney for the County of San Diego, concurs with the defendant's plea of Guilty/No Contest as set forth above.

Dated: 12-11-17 Chantal de Maupre [Signature]  
(Print Name) Deputy District Attorney (Signature)

**COURT'S FINDING AND ORDER**

The Court, having questioned the defendant and defendant's attorney concerning the defendant's plea of Guilty/No Contest and admissions of the prior convictions and allegations, if any, finds that: The defendant understands and voluntarily and intelligently waives his/her constitutional rights; the defendant's plea and admissions are freely and voluntarily made; the defendant understands the nature of the charges and the consequences of the plea and admissions; and there is a factual basis for same. The Court accepts the defendant's plea and admissions, and the defendant is convicted thereby.

Dated: 12-11-17 [Signature] DANIEL G. LAMBORN Judge of the Superior Court



## EXHIBIT C

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO  
EAST COUNTY DIVISION

DEPARTMENT NO. 2

BEFORE HON. DANIEL G. LAMBORN,  
JUDGE

THE PEOPLE,

PLAINTIFF

VS.

VICTOR TELLEZ,

DEFENDANT.

CASE NO. CE369196

REPORTER'S TRANSCRIPT  
DECEMBER 11, 2017

APPEARANCES:

FOR THE PLAINTIFF:

SUMMER STEPHAN  
DISTRICT ATTORNEY  
BY: CHANTAL DEMAUREGNE  
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

OFFICE OF THE PUBLIC DEFENDER  
BY: DAVID THOMPSON

REPORTED BY:

JOYCE IVES, CSR NO. 12103  
OFFICIAL REPORTER  
EL CAJON, CALIFORNIA

1                   EL CAJON, CALIFORNIA; DECEMBER 11, 2017; 9:00 A.M.

2

3                   THE COURT:   VICTOR TELLEZ, CASE ENDING 196.

4                   MS. DEMAUREGNE:   GOOD MORNING, YOUR HONOR.   CHANTAL  
5 DEMAUREGNE FOR THE PEOPLE.

6                   MR. THOMPSON:   GOOD MORNING, YOUR HONOR, DAVID  
7 THOMPSON WITH THE OFFICE OF THE PUBLIC DEFENDER.   MR. TELLEZ  
8 IS PRESENT BEFORE THE COURT IN CUSTODY.

9                   THE COURT:   THANK YOU.

10                  GOOD MORNING, MR. TELLEZ.

11                  THE DEFENDANT:   GOOD MORNING.

12                  THE COURT:   I'M HOLDING UP A CHANGE OF PLEA FORM,  
13 SIR, IT HAS YOUR NAME ON IT AND THE COURT CASE NUMBER ON IT.  
14 DID YOU INITIAL AND SIGN THIS FORM?

15                  THE DEFENDANT:   YES, SIR.

16                  THE COURT:   WAS THAT AFTER YOU READ AND CONSIDERED  
17 THE FORM?

18                  THE DEFENDANT:   YES.

19                  THE COURT:   DID YOU REVIEW IT WITH YOUR ATTORNEY,  
20 MR. THOMPSON?

21                  THE DEFENDANT:   YES.

22                  THE COURT:   AND IF YOU HAD ANY QUESTIONS, DID HE  
23 ANSWER THOSE QUESTIONS FOR YOU?

24                  THE DEFENDANT:   YES.

25                  THE COURT:   DO YOU HAVE ANY QUESTIONS NOW, SIR?

26                  THE DEFENDANT:   NO.

27                  THE COURT:   MY UNDERSTANDING OF THE PLEA  
28 ARRANGEMENT IS THAT YOU WILL BE PLEADING GUILTY TO COUNT 3,

1 PENAL CODE SECTION 288(A). THE PEOPLE WILL DISMISS THE  
2 BALANCE AND IT WILL BE A STIPULATED THREE YEARS IN STATE  
3 PRISON. IS THAT YOUR UNDERSTANDING OF THE PLEA ARRANGEMENT?

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ARE YOU ENTERING THIS PLEA FREELY AND  
6 VOLUNTARILY?

7 THE DEFENDANT: YES.

8 THE COURT: DO YOU UNDERSTAND THAT YOU HAVE THE  
9 FOLLOWING CONSTITUTIONAL RIGHTS, THE RIGHT TO A SPEEDY AND  
10 PUBLIC TRIAL BY JURY; THE RIGHT TO CONFRONT AND CROSS EXAMINE  
11 ALL WITNESSES AGAINST YOU; THE RIGHT TO REMAIN SILENT UNLESS  
12 YOU CHOOSE TO TESTIFY; AND THE RIGHT TO PRESENT EVIDENCE IN  
13 YOUR OWN BEHALF; DO YOU UNDERSTAND YOU HAVE THOSE RIGHTS,  
14 SIR?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: DO YOU WAIVE THOSE NOW IN ORDER TO TAKE  
17 ADVANTAGE OF THIS PLEA AGREEMENT?

18 THE DEFENDANT: YES.

19 THE COURT: DO YOU UNDERSTAND THE MAXIMUM YOU COULD  
20 DO AS A RESULT OF THIS PLEA IS THREE YEARS IMPRISONMENT, A  
21 \$20,000 FINE AND FOUR YEARS OF PAROLE?

22 THE DEFENDANT: YES.

23 THE COURT: DO YOU ADMIT, SIR, AS A FACTUAL BASIS  
24 THAT YOU WILLFULLY AND LEWDFULLY COMMITTED A LEWD AND  
25 LASCIVIOUS ACT UPON THE BODY PART, THE BACK, OF ZAKYRA,  
26 Z-A-K-Y-R-A, A CHILD UNDER 14 YEARS OF AGE WITH THE INTENT OF  
27 AROUSING YOUR SEXUAL DESIRES; DO YOU ADMIT THAT AS A FACTUAL  
28 BASIS, SIR?

1 THE DEFENDANT: YES.

2 THE COURT: HOW THEN, SIR, DO YOU PLEAD TO A  
3 VIOLATION OF COUNT 3, PENAL CODE SECTION 288(A), A LEWD ACT  
4 UPON A CHILD; GUILTY OR NOT GUILTY?

5 THE DEFENDANT: GUILTY.

6 THE COURT: MR. THOMPSON, DO YOU BELIEVE THIS PLEA  
7 IS BEING ENTERED IN A KNOWING, INTELLIGENT, AND VOLUNTARY  
8 FASHION?

9 MR. THOMPSON: YES.

10 THE COURT: THE COURT WILL MAKE THE SAME FINDING  
11 FOR THE WAIVER OF CONSTITUTIONAL RIGHTS.

12 MS. DEMAUREGNE, PEOPLE'S MOTION ON THE BALANCE?

13 MS. DEMAUREGNE: DISMISS, PLEASE.

14 THE COURT: OKAY. THAT MOTION IS GRANTED.  
15 DUE COURSE SENTENCING?

16 MR. THOMPSON: YOUR HONOR, WE ARE GOING TO WAIVE --  
17 BOTH SIDES WAIVE PROBATION REPORT. WE ARE GOING TO REQUEST  
18 DECEMBER 20TH FOR A SENTENCING DATE.

19 MS. DEMAUREGNE: THAT'S FINE, YES.

20 THE COURT: OKAY. VERY WELL, WE WILL SET A  
21 SENTENCING DATE FOR DECEMBER 20TH, AT 1:45, IN THIS  
22 DEPARTMENT. NO PROBATION REPORT IS ORDERED.

23 MR. TELLEZ IS REMANDED, WITHOUT BAIL.

24

25 (PROCEEDINGS CONCLUDED)

26 \* \* \*

27

28

## REPORTER'S CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) SS:

I, JOYCE IVES, CERTIFIED SHORTHAND REPORTER,  
CERTIFICATE NO. 12103, AN OFFICIAL COURT REPORTER OF THE  
SUPERIOR COURT OF THE COUNTY OF SAN DIEGO, STATE OF  
CALIFORNIA, DO HEREBY CERTIFY:

THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS  
HELD IN THE FOREGOING CASE;

THAT MY NOTES WERE TRANSCRIBED INTO TYPEWRITING UNDER  
MY DIRECTION;

AND THAT THE FOREGOING AND ATTACHED TRANSCRIPT IS A  
FULL, TRUE AND CORRECT TRANSCRIPT OF THE ORAL PROCEEDINGS HAD  
ON SAID DATE.

DATED THIS 6TH DAY OF OCTOBER, 2019.

A handwritten signature in cursive script that reads "Joyce Ives". The signature is written in black ink and is positioned above a solid horizontal line.

JOYCE IVES, CSR NO. 12103  
OFFICIAL COURT REPORTER  
SAN DIEGO SUPERIOR COURT

(GOVERNMENT CODE 69954(D): ANY COURT, PARTY, OR PERSON WHO  
HAS PURCHASED A TRANSCRIPT MAY, WITHOUT PAYING A FURTHER FEE  
TO THE REPORTER, REPRODUCE A COPY OR PORTION THEREOF AS AN  
EXHIBIT PURSUANT TO COURT ORDER OR RULE, OR FOR INTERNAL USE,  
BUT SHALL NOT OTHERWISE PROVIDE OR SELL A COPY OR COPIES TO  
ANY OTHER PARTY OR PERSON.)

## EXHIBIT D

I, VICTOR R. TELLEZ, do declare the following:

1. I was arrested on March 25, 2017, for a misdemeanor violation of Penal Code section 647.6, subdivision (a).
2. I was ultimately charged with three (3) counts of felony child molestation and assigned a Deputy Public Defender.
3. I met with my attorney, and I informed him that I did not do what they were accusing me of doing. I was innocent.
4. My attorney told me that we needed to continue the case to get a psychologist to evaluate me.
5. A psychologist never came to see me in the almost nine (9) months I was in jail.
6. I recall only meeting with my attorney when I was in court on my case, which was a total of three (3) times between March and December 11, 2017. My attorney never called me or visited me in jail.
7. On December 11, 2017, my attorney talked to me while I was in the holding tank in the courthouse. He told me that I should plead guilty because I would not win at trial.
8. I took his advice and pled guilty to one felony count. I agreed to be sentenced to three (3) years in state prison.
9. My attorney did not tell me that I could potentially spend the rest of my life incarcerated as a sexually violent predator.
10. Had my attorney told me about the possibility of lifetime incarceration as a sexually violent predator because of my guilty plea, I would not have pled guilty.

I declare under penalty of perjury that the foregoing is true and correct except for those matters stated on information and belief, and I believe those matters to be true.

Executed this 2nd day of February 2021, in San Diego, California:

VICTOR R. TELLEZ  
Declarant




## COVID-19 ADDENDUM

Due to the COVID-19 pandemic public health orders which restrict physical proximity between defense counsel and incarcerated clients, the declarant's signature was not readily available. Defense counsel therefore, after orally explaining and discussing the declaration with the declarant, placed declarant's name on the signature line on the declarant's behalf and with the declarant's consent.

Defense counsel requests that the parties accept declarant's name on the signature line of the declaration dated February 2, 2021, to be adopted and deemed to be declarant's signature for all purposes related to this declaration as if declarant signed the declaration himself.

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

Executed this 2<sup>nd</sup> day of February 2021, in San Diego, California.

  
KRISTEN SANTERRE HADEN  
Deputy Alternate Public Defender

## EXHIBIT E

ECS

SCE369196DA

MBO14501

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL

EAST

NORTH

SOUTH

DATE 12-20-17 AT 01:45 M.

17118961

PROB HEAR-SENTENCING

PRESENT: HON ROBERT O. AMADOR

JUDGE PRESIDING DEPARTMENT

CWE

CLERK

REPORTER

CSR NO. 12768

CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

TELLEZ

VICTOR

R

DEPUTY DISTRICT ATTORNEY / DEPUTY ATTORNEY GENERAL

B - P. DEFENDERS

ATTORNEY FOR DEFENDANT (PD / APD / OAC / RETAINED)

VIOLATION OF PC288(A)

P.O.

ENH(S)

INTERP.

OATH ON FILE / SWN.

PRIOR(S)

LANGUAGE

DEFENDANT PRESENT SELF REPRESENTED NOT PRESENT NOT PRODUCED

PROB. REV. DEFENDANT ADVISED OF RIGHTS AND ADMITS / DENIES A VIOLATION OF PROBATION WAIVES HEARING.

PROBATION IS REMAINS: FORMALLY / SUMMARILY REVOKED REINSTATED MODIFIED CONT. SAME CONDITIONS TERMD. EXT. TO:

JUDGMENT WAIVES ARRAIGNMENT. ARRAIGNED FOR JUDGMENT. IMPOSITION / EXECUTION OF SENTENCE IS SUSPENDED.

PROBATION IS: DENIED GRANTED YEARS (FORMAL / TO COURT) TO EXPIRE CONVERTS TO PROB. TO COURT

COMMITMENT TO SHERIFF FOR DAYS. STAYED TO PENDING SUCCESSFUL COMPL. OF PROBATION. PAROLE NOT TO BE GRANTED.

PERFORM DAYS PSP. HOURS VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION/ COURT BY

4TH AMENDMENT WAIVER: IMPOSED. / REMAINS IN EFFECT. / DELETED. PROTECTIVE ORDER: ISSUED. / REMAINS IN EFFECT. / MODIFIED. TERMINATED

FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. WORK FURLOUGH, REPORT: TO 5600 OVERLAND AVE. STE 190, SAN DIEGO 8:00 A.M.

COMMITMENT TO CA DEPT. OF CORRECTIONS & REHAB. DIVISION OF JUVENILE JUSTICE SAN DIEGO COUNTY SHERIFF (PC1170(h)/2057) ON

COUNT CODE & NO. PC288(A) FOR LOWER / MIDDLE / UPPER / INDETERMINATE TERM OF YEARS MONTHS / TO LIFE.

EXECUTION OF CONCLUDING DAYS MONTHS YEARS OF SENTENCE IS SUSPENDED, DURING WHICH TIME THE DEFT. SHALL BE SUBJECT TO MANDATORY SUPV. BY THE PROB. DEPT. (PC1170(h)(5)(b)). TERMS AND CONDITIONS SET FORTH IN THE ORDER GRANTING MANDATORY SUPV. (CRM-255).

PER PC1170(d) PER W1737 PRINCIPAL COUNT. STIPULATED SENTENCE. NO EARLY RELEASE OF ANY TYPE AUTHORIZED.

SENTENCE PER PC667(b)-(i)/1170.12. NOTICE OF FIREARMS PROHIBITION GIVEN PER PC29805.

NO VISITATION PER PC1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.

TESTING: COMPLIANCE WITH PC296 VERIFIED. DNA (PC296) HIV (PC1202.1)

DEFENDANT ADVISED RE: PAROLE / APPEAL RIGHTS. REGISTER PER PC290 HS11590 PC457.1 PC186.30

DEFENDANT TO PAY: FINE OF \$ INCLUDING PENALTY ASSESSMENT, PLUS THE FOLLOWING:

INSTALLMENT/ACCOUNTS RECEIVABLE FEE (PC1205(e)) \$ DRUG PROGRAM FEE (HS11372.7) \$

LAB ANALYSIS FEE (HS11372.5) \$ THEFT FINE (PC1202.5) \$

COURT OPERATIONS ASSESSMENT (PC1465.8) \$ CRIM JUSTICE ADMIN FEE (GC29550 et seq.) \$ 154

CRIMINAL CONVICTION ASSESSMENT (GC70373) \$ SEX OFFENDER REG. FINE (PC290.3) \$

PROB. HAVING BEEN FORMALLY REVOKED, THE PREVIOUS REST. FINE OF \$ SUSP. PER PC1202.44, IS NOW DUE.

RESTITUTION FINES: \$ 900 (PC1202.4(b)) PLUS 10% (PC1202.4(l)) FORTHWITH (PC2085.5)

\$ 900 (PC1202.44/PC1202.45) SUSPENDED UNLESS PROBATION/PAROLE/SUPERVISION REVOKED.

RESTITUTION TO VICTIM(S) PER P.O.'S REPORT / RESTITUTION FUND (PC1202.4(f)) \$ / IN AN AMOUNT

TO BE DETERMINED. JOINT & SEVERAL. AT COMBINED RATE OF \$ PER MONTH TO START 60 DAYS AFTER RELEASE / ON

REPORT TO PROBATION REVENUE & RECOVERY COURT COLLECTIONS FORTHWITH. WITHIN 72 HRS. OF RELEASE FROM CUSTODY.

PROCEEDINGS SUSPENDED PER PC1368, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.)

FUTURE HEARINGS WAIVERS: TIME FOR JUDGMENT. PRESENCE FOR RESTITUTION HRG. REFERRED FOR DIAGNOSTIC EVAL. PER PC1203.03. / W1707.2.

CONT. TO / SET FOR AT IN DEPT. ON MOTION OF COURT / DDA / DEFT. / PROB. OFFICER.

TO BE HEARD CONCURRENTLY WITH PRELIMINARY HEARING IN CASE TO TRAIL CASE(S)

CUSTODY STATUS DEFENDANT REMANDED TO CUSTODY OF SHERIFF WITHOUT BAIL. WITH BAIL SET AT \$

MAY BE RELEASED TO REP. OF PD / PROB./APPROVED RES. TREATMENT PROG. STAY / SERVE BAL. OF CUST. WHEN BED AVAIL. AFTER CUSTODY.

DEFT. ORDERED RELEASED FROM CUSTODY ON PROBATION. ON OWN / SUPERVISED RECOGNIZANCE. ON DEJ. ON MANDATORY SUPERVISION.

DEFENDANT TO REMAIN AT LIBERTY ON BOND POSTED \$ ON PROBATION. ON DEJ. ON OWN / SUPERVISED RECOGNIZANCE.

BONDS / WARRANTS BENCH WARRANT TO ISSUE, BAIL SET AT \$ COUNSEL REPORTS NO CONTACT WITH DEFENDANT.

SERVICE FORTHWITH. ORDERED WITHHELD TO BENCH WARRANT ISSUED / ORDERED IS RECALLED / RESCINDED.

DECLARATION OF NON-COLLUSION & RE-ASSUMPTION OF LIABILITY FILED. BAIL FORF. IS SET ASIDE. BAIL REINSTATED EXONERATED FORFEITED

UPON PAYMENT OF COURT COST \$ WITHIN 30 DAYS. COST WAIVED. BOND AMT \$ BOND NO.

BOND COMPANY AGENT

OTHER ALL PROPERTY IMPOUNDED, SEIZED, OR HELD IN CUSTODY IN THIS CASE TO BE DISPOSED OF PER POSSESSING AGENCY'S POLICY.

PROBATION: PREPARE SUPPLEMENTAL REPORT. SUBMIT POST-SENT. REPORT TO CDCR PER PC1203c. SEE ATTACHED MINUTES FOR ADDITIONAL ORDERS.

CONCURRENT WITH / CONSECUTIVE TO: CLERK: REGISTRAR OF VOTERS. DMV ABSTRACT B.A.C.

Date: ATTEST A TRUE COPY, Clerk of the Superior Court by Deputy

Distribution by on to JAIL DEFT. ATTY. PROB. PROB. Other:

SDSC CRM-002B (Rev. 4/14)

FELONY MINUTES - PRONOUNCEMENT OF JUDGMENT

**FELONY ABSTRACT OF JUDGMENT—DETERMINATE  
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM**  
(Not to be used for multiple count convictions or for 1/3 consecutive sentences)

**CR-290.1**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: <b>San Diego</b>		<div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> <div style="font-size: 0.8em;">Clerk of the Superior Court</div> <div style="font-size: 1.5em; font-weight: bold; margin: 10px 0;">JAN 02 2018</div> <div style="font-weight: bold;">By: N. Scoville, Clerk EAST COUNTY DIVISION</div>		
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: <b>Victor Raul Tellez</b> AKA: <b>Victor R Tellez et al.</b> CII NO.: <b>22941675</b> BOOKING NO.: <b>17118961</b> <input type="checkbox"/> NOT PRESENT	DOB: <b>07-28-58</b>			CASE NUMBER <b>SCE369196</b>
FELONY ABSTRACT OF JUDGMENT <input checked="" type="checkbox"/> PRISON COMMITMENT <input type="checkbox"/> COUNTY JAIL COMMITMENT <input type="checkbox"/> AMENDED ABSTRACT				
DATE OF HEARING <b>12-20-17</b>	DEPT. NO. <b>2</b>			JUDGE <b>R. Amador</b>
CLERK <b>L. Louis</b>	REPORTER <b>L. Uhuru</b>	PROBATION NO. OR PROBATION OFFICER <input type="checkbox"/> IMMEDIATE SENTENCING		
COUNSEL FOR PEOPLE <b>C. DeMauregne</b>		COUNSEL FOR DEFENDANT <input checked="" type="checkbox"/> APPOINTED <b>D. Thompson</b>		

1. Defendant was convicted of the commission of the following felony:

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM (L, M, U)	SERIOUS FELONY	VIOLENT FELONY	TIME IMPOSED	
						JURY	COURT	PLEA				YRS.	MOS.
3	PC	288(a)	Lewd Act Upon a Child	2017	12-11-17			X	L			3	0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL

4. Defendant sentenced: ☐ to county jail per PC 1170(h)(1) or (2) ☐ per PC 667(b)-(i) or PC 1170.12 (strike prior)  
☒ to prison per PC 1170(a) or 1170(h)(3) due to ☐ current or prior serious or violent felony ☐ PC 290 or ☐ PC 186.11 enhancement  
☐ PC 1170(a)(3). Pre-confinement credits equal or exceed time imposed. ☐ Defendant ordered to report to local parole or probation office upon release.

5. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

Restitution Fine(s): \$900 per PC1202.4 (b) forthwith per PC 2085.5 if prison commitment \$900 per PC 1202.45 suspended unless parole is revoked.  
 \$   per PC 1202.44 is now due, probation having been revoked.

Restitution per PC1202.4 (f): ☐ \$   ☐ Amount to be determined to ☐ \* victim(s) ☐ Restitution Fund  
 \* ☐ Victim name(s), if known, and amount breakdown in item 8, below. \* ☐ Victim name(s) in probation officer's report.

Fine(s): \$   per PC 1202.5. \$   per VC 23550 or    days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive  
☐ Includes: ☐ \$   Lab Fee per HS 11372.5(a) ☐ \$   Drug Program Fee per HS 11372.7(a) for each qualifying offense.

☒ Court Operations Assess.: \$ 40 per PC 1465.8. ☒ Conviction Assess.: 30 per GC 70373. ☒ Other: \$ 154 per (specify): gc29550

6. TESTING: a. ☐ Compliance with PC 296 verified b. ☐ AIDS per PC 1202.1 c. ☒ other (specify): DNA Testing Per PC296

7. IMMEDIATE SENTENCING: ☒ Probation to prepare and submit a post sentence report to CDCR per PC 1203c. Deft's Race / National Origin H

8. Other orders (specify): Register Per PC290

9. TOTAL TIME IMPOSED: 3      0

10. ☐ MANDATORY SUPERVISION: Execution of a portion of the total jail time imposed in item 9 is suspended and deemed a period of mandatory supervision under PC 1170(h)(5)(B) as follows: Suspended portion:    Served forthwith:   

11. ☐ This sentence is to run concurrent with (specify):    12. Registration Required: ☐ per (specify code section):     
 13. Execution of sentence imposed: a. ☒ at initial sentencing hearing. b. ☐ at resentencing per decision on appeal. c. ☐ after revocation of probation.  
 d. ☐ at resentencing per recall of commitment. (PC 1170(d).) e. ☐ other (specify):   

DATE SENTENCE PRONOUNCED	CREDIT FOR TIME SPENT IN CUSTODY TOTAL DAYS:	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS	TIME SERVED IN STATE INSTITUTION
12-20-17	334	291	<input type="checkbox"/> 2933 <input checked="" type="checkbox"/> 2933.1 <input type="checkbox"/> 4019	DMH      CDCR      CRC [ ]      [ ]      [ ]

15. The defendant is remanded to the custody of the sheriff ☐ forthwith ☒ after 48 hours excluding Saturdays, Sundays, and holidays.  
 To be delivered to ☒ the reception center designated by the director of the California Department of Corrections and Rehabilitation.  
☐ county jail ☐ Other (specify):   

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE	<b>N. SCOVILLE</b>	DATE <b>01-02-18</b>
--------------------	--------------------	----------------------

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

Page 1 of 1

## EXHIBIT F

SUMMER S. STEPHAN  
District Attorney  
MELISSA DIAZ, SBN 188302  
Deputy District Attorney  
Hall of Justice  
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Attorneys for Petitioner

**FILED**  
Clerk of the Superior Court  
MAY 21 2019  
By: Lori Brown, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
CENTRAL DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Petitioner,

v.

VICTOR TELLEZ,  
(CDCR# BF2983),

Respondent.

Nos. MH 116049/SCE369196  
DA: MBO145

**PETITION FOR INVOLUNTARY  
TREATMENT OF A SEXUALLY  
VIOLENT PREDATOR**  
(Welf. & Inst. Code, § 6600 et seq.)

Date: June 21, 2019  
Time: 9:00 a.m.  
Dept: 102

I

NOTICE IS HEREBY GIVEN through this Petition pursuant to  
Welfare and Institutions Code section 6600 et seq., the District Attorney of the County of San  
Diego hereby petitions this Honorable Court to commence proceedings to determine whether  
VICTOR TELLEZ is a sexually violent predator and should be committed for an  
indeterminate term to the custody of the California Department of State Hospitals for  
appropriate treatment and confinement in a secure facility designated by the Director of the  
Department of State Hospitals. Petitioner alleges respondent is a sexually violent predator in  
that respondent was convicted of a sexually violent offense against one or more victims, and

1 has a diagnosed mental disorder that makes him a danger to the health and safety of others in  
2 that it is likely he will engage in sexually violent predatory criminal behavior.

3 II

4 On December 11, 2017, in the Superior Court of California, for the County of  
5 San Diego, in case number SCE369196, VICTOR TELLEZ pled guilty to one count of Lewd  
6 and Lascivious Act Upon a Child Under Fourteen Years, in violation of Penal Code sections  
7 288(a), a felony, as charged in Count One. The victim was an 13-year-old female, Zakyra W.  
8 (DOB: 07/28/03).

9 III

10 On December 20, 2017, the Honorable Robert Amador, Judge of the Superior  
11 Court, sentenced respondent to 3 years state prison.

12 IV

13 Petitioner herein alleges that VICTOR TELLEZ is a person who has been  
14 convicted of a sexually violent offense against one or more victims for which he was  
15 sentenced and who has a diagnosed mental disorder that makes him a danger to the health and  
16 safety of others, in that it is likely he will engage in sexually violent predatory criminal  
17 behavior. (See Declaration of Melissa Diaz attached hereto.)

18 VII

19 Respondent is presently confined at San Quentin State Prison in San Quentin,  
20 California.

21 WHEREFORE, your petitioner prays that:

22 1. Proceedings be held in the manner provided by law pursuant to the  
23 provisions of Welfare and Institutions Code section 6600 et seq.

24 2. At the conclusion of the proceedings, the court commit respondent VICTOR  
25 TELLEZ to the Department of State Hospitals for an indeterminate term pursuant to  
26 Welfare and institutions Code section 6604.

27 3. The court issue an order to the Sheriff of the County of San Diego and to the  
28 Warden, San Quentin State Prison in San Quentin, California, directing the Sheriff to bring

1 respondent before this court for arraignment on this petition and for such further proceedings  
2 that are called for by Welfare and Institutions Code section 6600 et seq.  
3

4 Dated May 21, 2019

5 Respectfully submitted,

6 SUMMER S. STEPHAN  
7 District Attorney

8 By:



9 MELISSA DIAZ  
10 Deputy District Attorney  
11 Attorneys for Petitioner  
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6 Attorneys for Petitioner  
7

**FILED**  
Clerk of the Superior Court  
MAY 21 2019  
By: Lori Brown, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO  
10 CENTRAL DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,  
12 Petitioner,

13 v.

14 VICTOR TELLEZ,  
15 (CDCR# BF2983),

16 Respondent.

Nos. MH 116049/SCE369196  
DA: MBO145

**DECLARATION OF  
MELISSA DIAZ**

17 I, MELISSA DIAZ, declare as follows:

18 I am a deputy district attorney for the County of San Diego, State of California.

19 I have reviewed the files of the District Attorney's Office regarding the above- entitled  
20 case and documents submitted to this office by representatives of the California Department of  
21 State Hospitals. Based on that review, I believe that VICTOR TELLEZ is a person subject to  
22 the provisions of section 6600 et seq. of the Welfare and Institutions Code.

23 The factual bases for such belief are as follows:

24 On December 11, 2017, in the Superior Court of California, for the County of  
25 San Diego, in case number SCE369196, VICTOR TELLEZ pled guilty to one count of Lewd  
26 and Lascivious Act Upon a Child Under Fourteen Years, in violation of Penal Code section  
27 288(a), a felony. Respondent, VICTOR TELLEZ, was thereafter sentenced to a total term of 3  
28 years in state prison.

29 /////

1           Declarant herein alleges that VICTOR TELLEZ is a person who has been  
2 convicted of a sexually violent offense against one or more victims for which he was sentenced  
3 and who has a diagnosed mental disorder that makes him a danger to the health and safety of  
4 others, in that it is likely he will engage in sexually violent predatory criminal behavior.

5           Respondent is presently confined at San Quentin State Prison in San Quentin,  
6 California.

7           I have reviewed a letter, dated May 6, 2019, by the Deputy Director of the Department  
8 of State Hospitals, Christina Edens, recommending VICTOR TELLEZ be adjudicated a  
9 Sexually Violent Predator.

10          I have also reviewed Clinical Evaluations from Shoko Kokubun, PhD., and G. Preston  
11 Sims, Ph.D., which are attached to this declaration as "Exhibit A" and incorporated by  
12 reference into this declaration as if set forth in their entirety herein. Those documents conclude  
13 as follows:

14               1. Both evaluators concur Respondent VICTOR TELLEZ was convicted of one  
15 or more sexually violent offenses;

16               2. Both evaluators concur Respondent VICTOR TELLEZ has a diagnosed  
17 mental disorder that makes him a danger to the health and safety of others; and

18               3. Both evaluators concur it is likely respondent will engage in sexually violent  
19 predatory criminal behavior.

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1 Based on the foregoing, declarant believes that VICTOR TELLEZ is a person who has  
2 been convicted of a sexually violent offense against one or more victims and received a  
3 determinate sentence, that respondent has a diagnosed mental disorder that makes him a danger  
4 to the health and safety of others, and that it is likely respondent will engage in sexually violent  
5 predatory criminal behavior upon release from prison.

6 Therefore, the People seek the commitment of respondent VICTOR TELLEZ pursuant  
7 to the provisions of Welfare and Institutions Code section 6600 et seq.

8  
9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed at San Diego, California, on May 21, 2019.

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14 MELISSA DIAZ  
15 Deputy District Attorney  
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# EXHIBIT A

Forensic Services Division  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, California 95814  
[www.dsh.ca.gov](http://www.dsh.ca.gov)



May 6, 2019

**Summer Stephan, District Attorney  
San Diego County District Attorney's Office  
330 W. Broadway  
San Diego, CA 92101**

Subject: Referral for Civil Commitment Proceedings  
Tellez, Victor; CDCR# BF2983  
CDCR Release Date (EPRD): 9/10/19  
Controlling Discharge Date (CDD): 9/10/2022  
Inmate Location: San Quentin State Prison

Dear Ms. Stephan:

The Department of State Hospitals (DSH) recommends the commitment of Victor Tellez as a Sexually Violent Predator as specified in Welfare and Institutions Code (WIC) Section 6600, et seq. Following a pre-screen and referral by the Department of Corrections and Rehabilitation – Board of Parole Hearings and Classifications Services Unit, DSH evaluated Victor Tellez based on record review and risk and clinical assessment. This case is being referred to your county to file a civil commitment petition pursuant to WIC Section 6601 subd. (h) because this evaluation has concluded that all necessary statutory criteria are met.

In accordance with WIC 6608.5 subd. (b)(1), the court makes a county of domicile determination based on documents mentioned in the statute. DSH recommends and requests that this determination be made upon commitment and be included in the commitment Court Order. If your office decides to pursue commitment and would like information and assistance in identifying the county of domicile or additional information regarding the enclosed referral and recommendation, please contact DSH per the contact information provided below.

The mental health evaluations contained herein should be considered confidential under WIC Section 5328. DSH employees or contractors conduct the evaluations and can be reached through the Sex Offender Commitment Program, Department of State Hospitals, 1600 9th Street, Sacramento, California 95814. This office may be reached by telephone at (916) 653-1843 or by FAX at (916) 651-1168.

Your office is required by WIC 6601 subd. (l) to notify DSH within 15 days of making your decision in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Edens', with a large circular flourish at the beginning.

Christina Edens  
Deputy Director  
Forensic Services Division

Enclosures

**Forensic Services Division**  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814



## Summary Referral Sheet

### **Inmate Information**

**Name:** Tellez, Victor  
**DOB:** 07/28/1958    **Current Age:** 60  
**CDCR#:** BF2983  
**Current Location:** San Quentin State Prison

The California Department of Corrections and Rehabilitation (CDCR) contact is the Classification and Parole Representative.

**CDCR Release Date:** 9/10/19    **Type:** EPRD

The above is the inmate's release date to parole. If your office concurs with the Department of State Hospitals (DSH) recommendation, you may file a petition for commitment in the superior court pursuant to Welfare and Institutions Code Section 6601 subd. (i).

**Clinician Information** Listed below are the clinicians who evaluated this individual.

	<b>Phone #</b>	<b>FAX #</b>
Shoko Kokubun	(707) 320-3537	(916) 651-1168
Preston Sims	(916) 216-7530	(916) 651-1168

### **Contact Information**

Please contact DSH at (916) 653-1843 for any additional information.



# California Department of State Hospitals

1600 9<sup>th</sup> Street, Suite # 410, Sacramento, CA 95814

(916) 653-1843

## WIC 6600 EVALUATION REPORT

CONFIDENTIAL PATIENT INFORMATION PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 5328

### I. IDENTIFYING DATA

Name:	Victor Tellez
Date of Birth:	07/28/1958 (60 years old)
CDCR Number:	BF2983
CII Number:	A22941675
Facility:	San Quentin State Prison
EPRD:	09/10/2019
County of Commitment:	San Diego
Interview Date:	02/12/2019
Date Report Completed:	02/28/2019
Meets Criterion A	Yes
Meets Criterion B	Yes
Meets Criterion C	Yes
Final Outcome:	Positive
Evaluator Name:	Shoko Kokubun, PhD

Department of State Hospitals  
I declare that this is a true and correct copy  
of the original document. To the best of my  
knowledge, the DSH Evaluator is qualified  
pursuant to WIC 6601 (d) and/or (g).

Signature and Date

Mr. Victor Tellez was interviewed at San Quentin State Prison (SQSP) in San Quentin, CA on 02/12/2019 for as part of an evaluation to determine if he meets the criteria of the Sexually Violent Predator Law, Welfare and Institutions Code (WIC), Section 6600. The interview took place in a private room. His limbs were free, and he could move at will. I reviewed the Disability and Effective Communication System (DECS) printout for Mr. Tellez. He had a Test of Adult Basic Education (TABE) score of 9, indicating he reads at least at a 9<sup>th</sup>-grade level. He wore a hearing impairment vest. He told me he was hard of hearing and needed me to speak up. I spoke clearly and with elevated volume, facing him to achieve effective communication. He read the Notification of Evaluation as a Sexually Violent Predator form, which explains the nature and purpose of the evaluation. He was provided a copy of the form to read, and he was offered a copy of the form to keep, which he accepted. He was informed that the interview was voluntary, that a report would be written, that his case could go to court, that information provided by him could be used in the report and presented in court testimony, and unreported crimes would be reported as mandated by law. Mr. Tellez said that he understood what was explained to him, signed the notification form, and agreed to participate in an interview.



## SOURCES OF INFORMATION

### Records Reviewed:

1. Board of Parole Hearings (BPH) Documents:
  - a. Sexually Violent Predator Clinical Screening (01/20/2019).
2. California Department of Corrections and Rehabilitation (CDCR) Central File Documents:
  - a. Inmate Record Summary (09/11/2018).
  - b. Legal Status Summary (09/11/2018).
  - c. Inmate Case Notes (from 01/25/2018 to 09/11/2018).
  - d. Disability and Effective Communication System Printout (DECS) (02/12/2019).
  - e. 115 Rules Violation Reports (06/15/1994, 06/01/1994, and 03/15/1994).
  - f. Custodial Counseling (09/16/2011).
3. CDCR Medical and Mental Health Records:
  - a. Diagnosis & Problem (as of 02/13/2019).
  - b. Medication (as of 02/13/2019).
  - c. MHMD Progress Note (01/30/2019, 10/31/2018, 08/02/2018, 04/06/2018).
  - d. MHPC Progress Note (01/29/2019, 10/10/2018).
4. Offense-Related Records:
  - a. Court Case #SCE369196:
    1. Abstract of Judgment (AOJ) - Prison Commitment, Single or Concurrent Count Form, Case #SCE369196 (01/02/2018).
    2. San Diego County Probation Officer's Report, SCE#369196 (delivered 06/29/2018).
    3. San Diego County Superior Court Felony Complaint, Case # SCE369196 (03/29/2017).
    4. El Cajon Police Department Arrest/Juvenile Contact Report, Case #17002742 (03/28/2017).
    5. El Cajon Police Department Probable Cause Declaration for Warrantless Arrest (03/25/2017).
  - b. Other Cases:
    6. San Diego Regional Arrest/Juvenile Contact Report, Arrest Number 91-191362 (12/05/1991).
    7. San Diego Regional Arrest/Juvenile Contact Report, Incident #16090044526 (09/26/2016).
    8. San Diego Regional Arrest/Juvenile Contact Report, Incident #15100016193 (10/08/2015).
    9. El Cajon Police Department Arrest/Juvenile Contact Report, Case #14005101 (06/11/2014).
5. Other Records:
  - a. CLETS Database Response Criminal History (01/29/2018).
  - b. Interstate Identification Index Response – CA
  - c. Correspondence between Parole Services Sexually Violent Predator Unit and San Diego Police Department I.D. Section – Records (12/17/2018).

## Evaluation Procedures

1. Record review.
2. Clinical interview.
3. Mental status examination.
4. Actuarial risk assessment - Static-99R.
5. Review of dynamic risk factors.

## **II. FINDINGS**

### **A. Has the inmate been convicted of a sexually violent criminal offense against one or more victims? – YES**

#### Sexually Violent Predator (SVP) Criteria:

The WIC 6600 statute defines a "sexually violent offense" as one that involves force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or threatening to retaliate in the future against the victim or any other person. The statute (6600.1) further defines a "sexually violent offense" as one where the victim of the underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14. The following felony offenses qualify as "Sexually Violent Offenses:" Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.

#### Qualifying Offense: San Diego County, Court Case # SCE369196

According to the Felony Complaint, dated 03/29/2017, Mr. Tellez was charged with the following:

Charge No.	Date of Event	CA Penal Code	Victim Age or DOB	Disposition
1	03/25/2017	PC 288 (a), Lewd Act Upon a Child	Joel T. (Birth year 2007, age 9)	Dismissed
2	03/25/2017	PC 288 (a), Lewd Act Upon a Child	Alfredo S. (Birth year 2006, age 11)	Dismissed
3	03/25/2017	PC 288 (a), Lewd Act Upon a Child	Zakyra W. (Birth year 2003, age 13)	Convicted

Mr. Tellez's offense description was summarized from the El Cajon Police Department Arrest/Juvenile Contact Report, Case #17002742, dated 03/28/2017. According to the

report, on 03/25/2017, at approximately 1615 hours, the officers responded to a call of a male who had grabbed a young female in the area of the food court. A man matching the description walked past the officers and was detained. He was later identified as Mr. Tellez.

A 13-year-old female victim, Zakyra, said Mr. Tellez "came up behind her and hugged her from behind and tried to pull her toward him." He told her, "Come here" as he wrapped his arms around her waist, pulling her closer. When she turned around and faced him, he let go of her. She appeared to be shaken and was angered. Her friend saw his arms around the victim as the victim was pulling away from his grasp.

While the officers were speaking with the female victim, three young males, ages 9, 10, and 13, identified as Joel, Alfredo, and Alejandro approached the officers and said they had been touched by Mr. Tellez as well. They were sitting down on a green plastic grass seating area when Mr. Tellez sat down behind them. He then laid down behind them. Joel and Alfredo said the man stroked their backs and was saying "kaka," Spanish slang for poop to them. Alejandro said the man was lying down on a fake grass stand and said, "Come over here mama" to the girls as they walked past him. The boys got up and quickly walked, but he followed them.

Mr. Tellez emitted a strong odor of an alcoholic beverage coming from his breath and person. He began to raise his voice and became increasingly agitated while detained. He yelled, "racist white cops," "profiling minorities," and comments about shooting "black and Hispanic people." After he was informed of being detained for touching minors, he said, "I don't know what you're talking about," and he was at the mall for "just passing through." He denied having touched or said anything to the minors. The officers learned that he was a PC 290 registrant for three prior convictions of PC 243.4, Sexual Battery (05/24/1993, 07/30/2014, and 10/22/2015). He was also on active parole for PC 487, Grand Theft with an ankle monitor to track his movements.

Mr. Tellez was convicted on 12/11/2017 and sentenced on 12/20/2017 to a total of 3 years (AOJ - Prison Commitment, Single or Concurrent Count Form, Case #SCE369196, dated 01/02/2018).

#### Force, Violence, Duress, Menace, Fear, and Threat

According to WIC 6600, the criteria for a "sexually violent offense" is met when an individual is convicted of violating a specified section of the Penal Code (those identified previously in this report) and the offense involved an element of force, violence, duress, menace, fear of immediate and unlawful bodily injury, or threats of future retaliation against the victim or any other person. WIC 6600 also indicates that when the victim of a sexual offense is under the age of 14, the offense is considered to be sexually violent even if the offender did not use any overt acts of force, violence, duress, menace, fear or threat in the course of committing the offense.

In this case, Mr. Tellez was convicted of PC 288 (a), which is an enumerated offense under WIC 6600. His victim was a 13-year-old girl, which makes his crime statutorily a

sexually violent crime. Furthermore, his offense was committed by force in that he grabbed the victim from behind and moved her toward him.

#### Criterion A Conclusion

It is my opinion that Mr. Tellez was convicted of a qualifying sexually violent offense, and thus, he meets Criterion A.

#### **B. Does the inmate have a diagnosable mental disorder that predisposes the person to the commission of criminal sexual acts? – YES**

#### Behavioral Observations and Mental Status

Mr. Tellez was a short and overweight male. He was dressed in the CDCR-issued clothing. He had a bright yellow hearing impairment vest over his jacket. He also wore a pair of eyeglasses. He was cooperative with the interview. However, he avoided answering certain questions, particularly those relating to his sexual offenses, and responded by talking about peripherally related issues instead of giving direct answers. He reported his mood as "pretty good" but appeared to be slightly anxious. When directly asked about the symptoms associated with a mood episode, he replied, "no." His emotional expressions were appropriate to the contents discussed, but the range seemed restricted slightly. I noticed faint stuttering when he spoke. His responses were often brief and unelaborated so that it required follow up questions to obtain details. Otherwise, his thinking was clear and coherent, reflecting an organized thought process. He did not make any statement that suggested the presence of a delusion. He stated he has no suicidal ideation or homicidal ideation. He reported "no" to the experience of hearing voices or noises others do not hear (auditory hallucination) or seeing images others do not see (visual hallucination). During the interview, I did not appear to be responding to the internal stimuli. He was alert and oriented. His attention and concentration were intact. He was able to recall three words within a short delay. He was able to demonstrate a sufficient level of abstract thinking. His insight into sex offending was limited. His judgment was adequate during the interview.

#### Psychosocial History

Mr. Tellez stated he was born in Tijuana, Mexico as a middle child born to his parents. He had an older brother who passed away in 1999 or 2000 and has one younger sister who resides in San Diego. His family moved from Mexico to San Diego when he was about 2 or 3 years old. He indicated that both of his parents were now deceased: Mother in a car accident in 1982 and father from natural causes at an old age in 2004. He described that his relationship with his parents was "good." He provided a mixed report of his relationship with his sister in that he described his relationship with her was good. However, at one point in the interview, he also mentioned that she had taken out a restraining order against him after he had broken into her apartment. He indicated that they are still in contact with each other by writing.

Mr. Tellez described that he was a shy and timid boy, and he had minimal friends outside of his extended family. He said, "I don't have many friends. Mostly stay to myself. I got cousins, aunts, and uncles. They are my friends." Around age 13, he had gotten into a physical fight for the first time. He said, "I wasn't a trouble-maker. I wasn't looking for a fight but had quarrels with kids. You just have to fight back." He estimated having had a total of about 5 fights.

At age 30, he left his family home to enter into a substance rehabilitation program in San Diego. Subsequently, he had frequented similar programs or had been incarcerated intermittently.

### Educational History

Mr. Tellez said he dropped out of school in the 12<sup>th</sup> grade. He said, "They told me I was too old to come back. I started working instead." He did not obtain a GED but had attended a city college in 2003 or 2004 for one semester. He described that his average grades were "B's and C's." He indicated that he repeated 4<sup>th</sup> and 12<sup>th</sup> grade, but he was never placed in special education or was diagnosed with a learning disorder.

While his attendance had been well in the elementary school and junior high school, he began skipping classes in high school. He used to go to a park with other students to smoke marijuana. In elementary school, he had been sent to the Principal's Office a few times for talking or daydreaming in class. He was never suspended or expelled from school.

### Employment History

Mr. Tellez had worked in the areas of food services/restaurants, janitorial, and landscaping. He said he had worked in various restaurants in mid-70' to '80s, averaging about one year at a place. He typically got fired for showing up to work under the influence of drugs or quit because he was "too sick to work" from using drugs. He had worked in a janitorial position at various locations in the '80s and '90s, again with an average length of one year. However, he was fired or quit from the job for the same reason (i.e., drug use) as the restaurant jobs. He indicated that he had worked in landscaping "in between" jobs. He had received General Relief and food stamps since age 23 or 24. Asked if he had supported himself through criminal activities, he said he had sold stolen items and also sold heroin in 1988 or 1989 to support his drug habits.

### Relationship History

Mr. Tellez was single, never married, and has no children. He identified five significant romantic relationships in his life. All of his relationships lasted less than a year, and they ended due to either his drug use or incarceration. In 1993, he dated Stella for 3 months. He next dated Debbie "off and on for 2 to 3 months" in 1994 or 1995. He was with Linda for 2 months and lived with her for one month. While dating Linda, he met Kathleen and left Linda for Kathleen. He dated and cohabited with Kathleen for 6 months in 1999 to

2000. He met her at work while working as a janitor in a hospital. In all relationships, he denied any conflicts except for his drug use and stated there had been no abuse. However, at a later point in the interview, he indicated that his 1999 attempted rape case involved Kathleen who subsequently obtained a restraining order against him. He was also required to participate in mandatory anger management and domestic violation program.

According to the CDCR 115 RVR, dated 06/01/1994, Mr. Tellez received the violation for Refusing to Sign Parole Conditions, which included the conditions of parole mandating that he refrain from any contact with Estella, ex-girlfriend. These conditions were necessary based on his threatening letters to Estella and restraining order, which she obtained in December 1993. He refused to sign the conditions.

### Psychosexual History

Mr. Tellez recalled he first learned about sex from his older brother when he was 10 years old. His brother had his girlfriend over to home and sent Mr. Tellez to a store to buy condoms. At first, Mr. Tellez did not know what he was asked to purchase. Later, he learned from his brother about them. He said that as a child, he did not engage in any sex play with other children or have any sexual contact with older children or adults.

Around age 12, Mr. Tellez began to notice girls in a sexual or romantic way. He also remembered seeing the movie, *Cool Hand Luke*, in which was a scene with a scantily dressed woman washing a car when he was 15 years old. He said, "When I first saw it, it excited me. I awaken feelings I didn't know I had." He indicated he did not date much as a teenager stating, "I was a mama's boy. I was shy and timid. I was scared of girls and insecure. It took me a while to get over my insecurity and fear of talking to girls."

Mr. Tellez began masturbating at the age of 18 at the rate of about once every week. He said through his 20's, 30's, and 40's, the rate of masturbation remained the same. He reported that he had not masturbated "for a long time" due to his being in prison. He said he last masturbated about 2 years ago. Concerning the sexual fantasy, he gave an example of "a girl in bikinis." Asked about the ages of the "girls," he replied, "Over 18." When he masturbated, he viewed pornographic magazines. He stated "no" to having had a fantasy involving a child or coercive sex. Asked if he masturbated to improve his mood, he indicated that he had masturbated to cope with stress before.

Mr. Tellez related that he first viewed the pornographic magazine such as *Playboy* when he was 13 or 14 years old. As an adult, he would purchase one or two *Playboy* or *Hustler* magazines at a time. After "browsing through them" once or twice a week, he threw them away because he did not want others to find them. Asked about viewing or owning pornographic videos, he said he saw a pornographic movie at the age of 21 once or twice, and he had not owned any movies. He described that he had been to "a few" adult bookstores to look at pornographic magazines before he was on parole at the frequency of once or twice a week, weekly. For 6 months in 1985 or 1986, he used to frequent strip clubs on every Friday. He stopped going because he was out of jobs and

could no longer afford a visit.

His first sexual intercourse was at the age of 19. He estimated having had about eight sexual partners in his lifestyle, all of whom females. Among them, two or three were prostitutes. When he was in a relationship, he had sex with a partner "every night" or "almost every night." He indicated he cheated on Linda with Kathleen. Regarding the use of prostitutes, he reported that it was in 1984 or 1985 and in 1993 in Mexico. He did not know the ages of the prostitutes but estimated to be in his 20's or 30's. He said he paid them to have vaginal intercourse.

Mr. Tellez denied that he engaged in a variety of sexual behaviors including exhibitionism (exposing one's genitals to unsuspecting person), public masturbation, fetishes (sexual arousal to objects or non-genital parts of human body), voyeurism (sexual interests to spying on people engaging in private activities), bestiality (sex with animals), obscene phone calls, necrophilia (sexual arousal to dead body), sadism, or masochism, or other unusual sexual activities.

When inquired about the experience of frottage (rubbing up against 'unsuspecting person'), He said he had and explained that about 2 years ago, a woman accused him of such an act while riding on a crowded trolley. He said, "I pressed on a woman. It was a crowded Trolley. She took it in the wrong way."

#### Criminal History

Mr. Tellez said he had no juvenile criminal history. No juvenile history was documented in the records reviewed. His adult criminal history obtained from CLETS was listed in the table below.

Date	Description	Disposition
02/08/1977	HS 11377 (a), Possess Controlled Substance PC 647, Disorderly Conduct: Under Influence of Drug	03/04/1977 Drug Diversion (PC 11377) 6 months diversion  09/30/1977 Drug diversion terminated/case dismissed
09/24/1978	Alien Smuggling	No Formal Charge – Prosecution Declined
07/01/1979	PC 647 (f), Disorderly Conduct: Under Influence of Drug	08/16/2005 No disposition information available
01/07/1980	Smuggling Alien Transportation of Illegal Aliens	01/08/1980 Convicted both counts– 20 days Confinement
07/27/1980	HS 11550, Use/Under Influence Control Subject	09/22/1980 Prosecutor Reject/Rel Detention

	BP 4143 (a), Possess Hypodermic Needle/Syringe	Only
08/01/1980	PC 459, Attempted Burglary	08/18/1980 Dismissed/Furtherance of Justice
05/17/1982	Warrant PC 488, Petty Theft	05/18/1982 Dismissed – PC 484/488  Convicted – PC 602 (j), Trespass: Injure Property Misdemeanor 3 years probation, 2 days jail
07/17/1983	HS 11550 (a), Use/Under Influence of Controlled Substance	07/29/1983 Prosecution Reject/Lack of Corpus
01/27/1984	PC 475a, Possess Bad Check/Money Order	04/13/1984 Dismissed – PC 470, Forgery, PC 475 a, Possess Bad Check, PC 496.1, Receive Known Stolen Property
10/20/1984	Warrant PC 470, Forgery PC 475 a, Possess Bad Check/Money Order PC 496.1, Receive Known Stolen Property	11/21/1984 Convicted – PC 496.1 Misdemeanor 3 years probation, 18 days jail  06/19/1985 Probation Revoked  03/09/1987 Probation Reinstated 63 days jail, work
04/08/1988	PC 666, Petty Theft with Prior Jail: Special Offenses	04/24/1988 Prosecution Reject – Lack of Corpus  08/29/1990 Dismissed/FOJ/Plea to Other Charge
12/05/1991	PC 243.4, Sexual Battery PC 236, False Imprisonment PC 242, Battery on Person (2 counts)	05/24/1993 Convicted – PC 243.4 (d), Sexual Battery: Sex Arousal Misdemeanor <b>3 years probation, 30 days jail</b>  10/06/1995 Probation Modified – extended 2 years



		03/25/1996 Probation Reinstated – 120 days jail  09/24/1998 Probation Reinstated
05/20/1993	Contempt PC 243.4 (d), Sexual Battery: Sex Arousal HS 11550 (a), Use/Under Influence Controlled Substance PC 242/243 (a), Battery	08/16/2005 No disposition information available
07/09/1993	VC 23175, DUI With Prior Specific Convictions PC 148, Obstructs/Resists Public Officer PC 166.4, Disobey Court Order/Process	07/23/1993 Dismissed/FOJ/Plea to Other Charge  08/20/1993 VC 23152 (a), Drunk Driving Convicted – Felony 2 years Prison
12/12/1994	PC 273.6, Violation of Court Order to Prevent Domestic Violence	12/28/1994 Convicted Misdemeanor 180 days jail  03/20/1995 Violation of Parole – To Finish Term
10/04/1995	Contempt PC 243.4 (d), Sexual Battery: Sex Arousal	Unknown
10/29/1995	HS 11550 (a), Use/Under Influence Controlled Substance	01/09/1996 Prosecution Rel-Detention Only – Lack of Sufficient Evidence  11/20/1995 Violation of Parole – To Finish Term  04/01/1996 Violation of Parole – To Finish Term
10/21/1996	PC 273.5 (a), Inflict Corporal Injury Spouse/Cohabitant	10/23/1996 Prosecution Rel – Detention Only – Interest of Justice  02/07/1997 Convicted – PC 273.5 (a) Misdemeanor 365 days jail  02/13/1997 Violation of Parole – To Finish

		Term 10/05/1998 Violation of Parole – To Finish Term
03/27/1999	PC 594 (b)(4), Vandalism: Spec Dollar Amount	03/31/1999 Convicted – Misdemeanor 3 years probation
07/01/1999	<b>Attempted PC 261 (a)(2), Rape: Force/Fear etc PC 422, Threaten Crime with Intent to Terrorize PC 236, False Imprisonment with Violence PC 243 (e)(1), Battery: Spouse/Ex Spouse/Date PC 243.4 (a), Sexual Battery</b>	<b>07/07/1999 Prosecution Rel-Detention Only – Other</b>  <b>07/20/1999 Convicted – PC 243 (e)(1) Misdemeanor 365 days jail</b>
07/17/1999	Probation Violation – PC 273.5, Inflict Corporal Injury on Spouse/Cohabitant	Unknown
04/11/2000	PC 273.6 (a), Violation Court Order to Prevent Domestic Violence	04/26/2000 Convicted Misdemeanor 365 days jail
11/01/2000	PC 273.6 (a), Violation of Court Order to Prevent Domestic Violence	11/29/2000 Convicted – PC 273.6 (a) Misdemeanor 3 years probation, 270 days jail, restitution
07/22/2001	PC 136.1 (b)(1), Attempt Prevent Victim: Report PC 148 (a)(1), Obstruct Public Officer PC 273.6 (a), Violation Court Order to Prevent Domestic Violence	08/01/2001 Convicted – PC 273.6 (a) and PC 136.1 (b)(1) Misdemeanor 3 years probation, 365 days jail  08/26/2005 Probation Reinstated 180 days jail
05/03/2004	<b>PC 243.4 (d)(1), Sexual Battery: Sex Arousal</b>	<b>05/05/2004 Convicted – PC 242/243 (a), Battery Misdemeanor 3 years probation, fine</b>
04/14/2005	PC 488/666, Petty Theft with Prior/Petty Theft/Grand Theft/Burglary or Robbery	04/14/2005 Convicted Misdemeanor 3 years probation, 1 day jail, fine

07/15/2005	PC 666, Petty Theft with Prior Jail: Spec Offenses PC 459, Burglary: Second Degree	07/28/2005 Convicted – unspecified charge  11/04/2008 Probation Violation/Revocation and/or Reinstate with Sentence Modification
09/20/2007	PC 666, Petty Theft with Prior Jail: Spec Offenses PC 459, Burglary: Second Degree PC 487 (a), Grand Theft: Money/Labor/Prop	10/03/2007 Convicted – unspecified charge  11/07/2008 Probation Violation/Revocation and/or Reinstate with Sentence Modification
06/17/2009	PC 211, Robbery	Unknown
06/19/2009	PC 459, Burglary	07/06/2009 Convicted - PC 487 (c), Grand Theft From Person PC 459, Burglary: Second Degree 2 years prison
06/25/2010	PC 3056, Violation of Parole: Felony	06/30/2010 Violation of Parole –To Finish Term
11/07/2010	PC 3056, Violation of Parole: Felony	11/10/2010 Violation of Parole – To Finish Term
05/24/2011	PC 3056, Violation of Parole: Felony	05/31/2011 Violation of Parole – To Finish Term
11/07/2011	PC 666, Petty Theft with Prior Jail: Spec Offenses	12/21/2011 Convicted – PC 459, Burglary Felony Stayed
04/27/2012	PC 3056, Violation of Parole: Felony	Unknown
08/12/2012	PC 3056, Violation of Parole: Felony	Unknown
09/25/2012	PC 212.5, Robbery	09/25/2012 Released/Detention Only
09/25/2012	PC 3056, Violation of Parole: Felony	Unknown
09/28/2012	PC 459, Burglary	12/06/2012 Convicted PC 487 (c), Grand Theft from Person

		PC 459, Burglary: Second Degree 16 months prison
06/12/2013	PC 3056, Violation of Parole: Felony	Unknown
06/25/2013	PC 290, Failure to Register as Sex Offender	Unknown
10/24/2013	PC 290.18 (g), Violation Transient 30 days Update PC 3000.08, Violation of Parole	Unknown
12/20/2013	PC 3056, Violation of Parole: Felony	Unknown
04/08/2014	PC 3056, Violation of Parole: Felony	Unknown
04/09/2014	PC 853.7, Fail to Appear After Written Promise PC 640 (c)(3)(a), Misuse Transit System Ticket	Unknown
05/03/2014	PC 3056, Violation of Parole: Felony	Unknown
06/11/2014	<b>PC 3056, Violation of Parole: Felony</b>	<b>07/30/2014 Convicted – PC 243.4 (e)(1), Sexual Battery: Touch for Sex Arousal Misdemeanor 120 days jail</b>
07/10/2014	PC 243.4 (e)(1), Sexual Battery: Touch for Sexual Arousal	(see above)
09/05/2014	PC 3056, Violation of Parole: Felony	Unknown
11/18/2014	PC 3056, Violation of Parole: Felony	Unknown
01/19/2015	PC 3056, Violation of Parole: Felony	Unknown
03/23/2015	PC 3056, Violation of Parole: Felony	Unknown
06/19/2015	PC 3056, Violation of Parole: Felony	07/23/2015 Disposition Unknown [PC 290.018 (a)]
07/01/2015	PC 290.018 (a), Sex Offender Failure to Register	Unknown
10/08/2015	<b>PC 243.4 (e), Sexual Battery: Touch for Sexual Arousal</b>	<b>10/22/2015 Convicted Misdemeanor 3 years probation 150 days jail</b>
10/09/2015	PC 3056, Violation of Parole: Felony	Unknown

01/12/2016	PC 3056, Violation of Parole: Felony	Unknown
04/02/2016	PC 3056, Violation of Parole: Felony	Unknown
09/26/2016	<b>PC 243.4 (e)(1), Sexual Battery: Touch for Sex Arousal [two counts]</b> <b>PC 3056, Violation of Parole: Felony</b>	Unknown
09/28/2016	PC 853.7, Fail to Appear After Written Promise PC 640 (c)(1), Fail to Pay Fare: Public Transit System	Unknown
12/31/2016	PC 3056, Violation of Parole: Felony	
03/25/2017	<b>PC 647.6 (a), Annoy Child – 18 [three counts]</b> <b>PC 3056, Violation of Parole: Felony</b>	<b>01/25/2018</b> <b>Convicted – PC 288 (a), Lewd or Lascivious Acts with Child Under 14</b> <b>3 years prison</b>
05/02/2017	PC 290.18 (g), Violation Transient 30 Days Update	

According to the Correspondence between Parole Services Sexually Violent Predator Unit and San Diego Police Department I.D. Section, dated 12/17/2018, the arrest reports had been purged and destroyed for his 05/20/1993 arrest for PC 243.4 (d), Sexual Battery (Report #93-805761A); for 10/04/1995 arrest for PC 243.4 (d), Sexual Battery (Report #95-81194A); for 07/01/1999 arrest for PC 261, Attempted Rape, et al. (Report #99-146724A); and for 11/01/2000 arrest for PC 273.6, Violation of Restraining Order and PC 243.4, Sexual Battery (Report #00-175308A).

### *Sexual Offenses*

### **Qualifying Offense**

Regarding the qualifying offense that occurred on 03/25/2017, Mr. Tellez was requested to provide his perspectives on the incident. He focused on the arrest process and avoided discussing the interactions he had with the victims, requiring repeated direct redirections. He reported that he had used heroin the day before and had been drinking about one pint of vodka on the day of the incident. He decided to go to the mall because he was bored. He explained,

I was at the mall. A cop approached me and said he was gonna arrest me. They said I was harassing some kids. I wasn't harassing anybody. He called my parole agent. I was taken into the custody. They got me with all sorts of charges. I never had sex with a minor. [The description of the police reports was provided and questioned about his actions] If I did, it wasn't sexual. I bumped into them or something. I didn't touch them in private part or nothing like that. My attorney told me

I can discredit the kids by having them on the stands. Tramped up charges. My attorney advised against me because of my prison record. The jury wasn't gonna go with my favor.

I pointed out that the victim reported that he hugged her from behind and pulled her toward him and not just bumping into her. He said, "I might have hugged her. I might have bumped into her." Again, asked to describe the interaction he had with the female victim, he said, "None. It was a crowded mall. Maybe I bumped into her by accident. It wasn't planned. I didn't plan it. It wasn't premeditated. I didn't mean to scare her or get my rocks off." He told me he did not remember how she looked but recalled that she was with two teenagers. Asked the intention of saying, "Come here mama," he replied, "If I said it, I don't remember." He went on describing calling females "mama" was simply a friendly term. I then asked if he would call his sister using the term, he stated, "No. I wouldn't."

As for the male victims, Mr. Tellez said their statements were false. He said, "They were there, saying I did this and did that. They are "so-called" witnesses. They were trying to set me up, false charges against me. I just happened to be the person." Asked if he had touched them, he replied, "I might have. I don't remember." I questioned what reason he would have to touch the boys. He answered, "Boy way? Harass them? Push them out of the way? They mistook it."

When questioned his thoughts toward the victims now, he reported that they had fabricated the story for "whatever reason" and likely had done similar things toward others as well. Asked why the children would make up a false allegation, he responded, "Kids do all kind of evil kind of stuff."

#### **1991 [PC 243.4, Sexual Batter]**

According to the San Diego Regional Arrest/Juvenile Contact Report, Arrest Number 91-191362, dated 12/05/1991, the officers responded to the shopping center to a report of a battery with a suspect in custody. Upon arrival, they were informed that the security guard had taken Mr. Tellez into custody for battery on three female victims.

Victim 1 and a witness were in the gallery when Mr. Tellez entered. He walked up to them and asked them their names and other questions. Victim 1 became concerned because he was "acting weird." She ignored him and continued to type on her typewriter. He then walked up behind her, bent over her, and put his hand up her "skirt and grabbed her vagina with force." She attempted to get away, but he would not let her up. He continued to grab her vagina at this time. She slapped him, stunning him and [illegible] him to back up. He got up and yelled him to get out. He then casually walked out. She called the mall security and advised them of the incident.

Victim 2 said she was working at the fragrance counter when Mr. Tellez approached her and got very close to her. She backed up, and he again got very close. She backed up four to five times because he kept getting close to her. She then walked behind the

fragrance counter and asked him if he needed help. He began asking about the different colognes. She showed him the colognes. He grabbed her hands. She pulled away, and he again grabbed her hands. She said he grabbed her hands approximately five times. She told him she could not help him and she called the store security.

Victim 3 is store security who received a phone call that a man was causing a problem at the fragrance counter on the first floor. She arrived at the location and saw him harassing the Victim 2. Victim 3 told him he would have to leave. At this point, he left. She then went to the first floor where she saw him harassing another female employee. She confronted him identifying herself as store security and told him to leave the store. She then escorted him toward the exit doors. Before leaving, he turned around and lightly slapped her in the face. He then exited the store where he was detained by mall security officers. He told the security officers that he was not worried because "what he did was a misdemeanor and they only book felonies into jail."

During the interview with me, Mr. Tellez said he remembered touching Victim 1's buttocks but denied touching her vagina. He stated he remembered talking to Victim 2 and asking her about colognes. Asked if he cornered her and grabbed her hands, he stated, "I must have." Concerning Victim 3, he said it did not happen because he would not hit a security person. He indicated that he was under the influence of heroin and alcohol on that day.

#### **1999 [PC 243 (e)(1), Battery: Spouse/Ex Spouse/Date]**

There was no official record available on this case because it had been purged or destroyed. Mr. Tellez told me that this case involved Kathleen. He stated, "I was living with Kathleen. We were having sex and then it got a little rough. Someone called the cops. The cop got there. I was on parole. They got me for all kinds of charges." Asked what he meant by "rough," he stated, "I must have put my hands on her. On her arms to pin her arms. I must have been drunk" and "I was forcing myself too roughly into her. I remember that. I guess the first chance she got, she called the police or something." He also said it could have been the neighbor or "somebody" that called the police and not the victim. Asked if she was screaming loud enough for the neighbor to hear, he said, "Yeah. Well, she wasn't." He said that the sexual intercourse was consensual at first, but "I guess it wasn't the way it was supposed to be done." To my inquiry concerning the reason for rough sex, he responded, "I've been drinking that day, and my judgment was impaired, and I made a bad decision." Reportedly, Kathleen obtained a restraining order following the incident. He was ordered to complete the anger management and domestic violence classes.

#### **2004 [PC 242/243 (a), Battery]**

There was no official record available for review on this case. When questioned about this case, Mr. Tellez stated that he did not recall any aspects of the case.

#### **2014 [PC 243.4 (e)(1), Sexual Battery: Touch for Sex Arousal]**

According to the El Cajon Police Department Arrest/Juvenile Contact Report, Case #14005101, dated 06/11/2014, On 06/11/2014 at approximately 1245 hours, the officers responded to a report of sexual assault. The victim, (Katrina, 24 years old) was standing next to her car in the parking lot of a beauty school. She was bent over, reaching into her car. Her friend was standing next to her. Mr. Tellez walked up from behind and grabbed the victim's left buttock and squeezed it. He looked at the victim in the eyes and walked away. The victim then called the police. He was on parole at the time of this offense.

Mr. Tellez indicated that the victim was a stranger to him and touched her buttocks without her consent. He agreed to the offense description and said, "That's what happened." He reported that he was under the influence of heroin and alcohol.

**2015 [PC 243.4 (e), Sexual Battery: Touch for Sexual Arousal]**

According to the San Diego Regional Arrest/Juvenile Contact Report, Incident #15100016193, dated 10/08/2015, on 10/08/2015, at 2012 hours, the officers received a report of a sexual battery. The victim was a 29 year-old-female, Rita. The offense detail was not included in the provided report. When the officers responded to the scene, they saw a parked van. Behind the van, a man (Mr. Tellez) was heating a brown liquid in the bottom of an aluminum can, which was suspected of being heroin. While they conducted the curbside line up, he asked for paramedics because he was going through heroin withdraw.

When asked about the incident, Mr. Tellez stated, "I don't know. I touched her in her butt." The victim was a stranger to him. He explained, "I was drinking, and my judgment was impaired."

**2016 [PC 243.4 (e)(1), Sexual Battery: Touch for Sex Arousal [two counts] PC 3056, Violation of Parole: Felony]**

According to the San Diego Regional Arrest/Juvenile Contact Report, Incident #16090044526, dated 09/26/2016, on 09/26/2016 at approximately 1300 hours, Mr. Tellez touched the victim, Carolyn's leg and buttocks without permission, and then touched the victim, Laura's breast without permission. A witness told the police a man possibly grabbed a woman's breast and then ran into the trolley.

Mr. Tellez stated that these ladies were strangers to him. He also said it was true that he touched Carolyn's leg and buttocks and touched Laura's breast, but these acts were consensual. Asked how they consented, he said, "I'm not saying they agreed." I explained the meaning of consent. At this point, he said he mistook their gestures to be consensual. He was evasive about the circumstance of the incidents, but he eventually described that he had asked them for a direction and "hugged her and grabbed her." He ultimately said, "That's my fault" involving both victims.



### *Institutional Rules Violation*

Mr. Tellez had received no CDCR 115 Rules Violation Report during the present term. During the prior term, he sustained three violations, but none was sexual misconduct.

- 06/15/1994 – Failure to Report (failed to show up at his job site on time)
- 06/01/1994 – Failed to Return to His Job Assignment
- 03/15/1994 – Misuse of Telephones

### *Community Supervision*

Mr. Tellez has numerous parole and probation violations. I did not have access to the official documents with the details of the violations. However, he self-reported that the violations were mostly for absconding, drinking, and violating the restraining order by Kathleen and his sister.

### Substance Abuse History

Mr. Tellez endorsed an extensive history of using substances going back to about 13 years old. I listed the type of substance, the corresponding period of use, and the peak frequency and quantity for these substances in a table below.

Substance	Age of First Use and Last Use	Peak Frequency and Quantity
Alcohol	From 19 years old to 2 years ago, on the day of the arrest	"A lot" – three, 40 oz, every other day
Marijuana	13 years old to 4 years ago	Smoking – a joint, every day
Cocaine	18 or 19 years old to about 1986	Injection – a ¼ gram, every other day
Methamphetamine	"In my 40's" about 45 years old	Tried it once or twice by snorting
Heroin	"18 years old to the day before I got arrested for the present case."	Injection – a ¼ gram, once a week
PCP	35 years old	Tried once
LSD	19 years old	Tried it once or twice
Huffing (paint)	15 or 16 years old	Once every week
Prescription Medications (muscle relaxer, codeine, pain killer, hydrocodone, valium)	45 years old to 2 years ago Got injured at work. A doctor prescribed muscle relaxer and pain medication	Doubling or tripling the dose, every day

Among them, he identified alcohol and heroin as his preferred substances and endorsed negative consequences, developing tolerance, having had cravings, and

experiencing withdrawal. While he acknowledged having developed the craving also for cocaine, he did not report other problematic issues or negative consequences from the use of cocaine. As noted earlier section of this report, he indicated that he had undergone substance recovery programs unsuccessfully throughout his life and attended and failed at least ten programs.

Mr. Tellez's commitment to remaining sober seems uncertain, and he was ambivalent. For example, in the MHPC Progress Note, dated 10/10/2018, it was noted that he realizes that he must avoid alcohol and drugs due to his recently diagnosed medical condition (i.e., cirrhosis), he found it "somewhat daunting. A similar concern was documented in MHPC Progress Note, dated 01/29/2019.

### Medical History

Mr. Tellez said he has hepatitis C from sharing a needle with other substances users. He also reported having had surgery in 1999 for "bleeding ulcer." He reported no other history of significant injury, medical illness, or chronic condition. In 2010 or 2011, he said he passed out in the prison yard while walking. He was unaware of whether it was due to a seizure or a heat stroke.

Mr. Tellez's medical diagnoses included hypertension, cirrhosis, hepatitis, hyperlipidemia, and hearing loss (Diagnosis & Problem as of 02/13/2019).

### Psychiatric History

Mr. Tellez reported that his psychiatric treatment history was limited to the prison setting and while on parole. He endorsed no history of psychiatric hospitalizations. He explained that he had been treated for depression and anxiety for 10 years, and his current medications were Vistaril (an antihistamine that can be used to treat anxiety) and Remeron (an antidepressant). He said he had received a mandatory outpatient therapy for domestic violence and anger management following the conviction involving the battery on Kathleen and received treatment for his mood through the parole outpatient clinic (POC).

Concerning his experience of attending sex offender treatment, he related that he had gone to "sessions with psychologists" through POC for 3 months. The treatment required him to attend a group, twice a week. He did not complete the program because he was arrested for the present case. Asked what contents he remembered from the groups, he said, "I learned a lot of things [Q: Like what?] um... What not to do or not to go. How to get out of situations. Not to get into situations."

Mr. Tellez told his CDCR treatment provider a mixed history of psychiatric treatment in the community. He initially stated that he had no significant mental health symptoms or treatment prior to his incarceration and no psychiatric hospitalization or outpatient treatment in the community. He also denied any history of suicidal attempt in the past (e.g., MHPC Progress Note, dated 01/29/2019; MHMD Progress Note, dated

04/06/2018). However, on 01/30/2019, he reported that he had been psychiatrically hospitalized "few times" in the community and self-injurious behavior by cutting himself in the community (MHMD Progress Note, dated 01/30/2019). In CDCR, he has had no history of mental health treatment intervention at the Enhanced Outpatient Program level of care or Mental Health Crisis Bed. He began receiving mental health treatment service at CCCMS level of care in 2010 for depression and anxiety. Reportedly, during his second term, he began having symptoms of depression due to having family problems and difficulty adapting in prison setting (MHPC Progress Note, dated 01/29/2019; MHMD Progress Note, dated 04/06/2018).

Mr. Tellez has not observed with any objective signs or symptoms of depression or anxiety, but he had endorsed feeling frustrated, anxious and depressed (isolated, helpless, withdrawn, irritable) due to hearing impairment (MHMD Progress Note, dated 08/02/2018). On 10/31/2018, he reported having had sleep difficulty and low energy because of it, but he did not endorse other symptoms associated with a major depressive episode (MHMD Progress Note, dated 10/31/2018). He had been considered for the diagnoses of major mood disorder or substance-induced mood disorder, as well as adjustment disorder with mixed anxiety and depressed mood (MHMD Progress Note, dated 01/30/2019). Consistent with his self-report, his present medications were Vistaril and Remeron (Medication as of 02/13/2019).

#### Future Plans

Regarding the plan for housing, Mr. Tellez said he planned to obtain a referral from his parole officer for a sober living program. As for his plan for income, he wished to get on the SSI program. As his social support, he identified his sister, indicating that she no longer has an active restraining order against him and she had been in contact with him. He also said he has support from the church. Asked about the plan for sex offender treatment, he said, "Well, I'm sure it would be required and makes me go as a condition of parole. If I don't, that's a violation. Even if I don't like it, I gotta go. But I might learn something." Asked what he would do if it were not mandated, he replied, "I would never go." I questioned him if he thought he had any problems with sexual offending. He responded, "Yeah. But I don't want to pay out of my pocket. I can't pay for that kind of treatment."

#### Diagnosable Mental Disorder

According to WIC 6600, a diagnosable mental disorder is "a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." It is my opinion that Mr. Tellez has a mental disorder as defined by WIC 6600, and meets the diagnostic criteria for the disorders described in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) for the following:

302.89, Frotteuristic Disorder  
304.00 Severe Opioid Use Disorder, In a Controlled Environment  
303.90 Severe Alcohol Use Disorder, In a Controlled Environment  
Antisocial Personality Traits

#### Frotteuristic Disorder

The DSM-5 defines the diagnosis of frotteuristic disorder as the recurrent and intense sexual arousal from touching or rubbing against a nonconsenting person, as manifested by fantasies, urges, or behaviors. Mr. Tellez has nine victims who reported that he had touched them sexually without their consent. His first known sex crime of the touching of a nonconsenting person for sexual arousal occurred in 1991 involving two adult female victims. Subsequently, he has had at least five incidents of groping non-consenting people. He initially attempted to characterize his behaviors as an accident and not sexual. He later stated that his actions were due to impaired judgment. He had touched the victims' breasts, buttocks, and vagina, which indicated that his touching was for the purpose of sexual arousal or gratification. His continued behavior of frotteurism despite the detection and sanction reflects a recurrent and intense nature of the arousal associated with this behavior. His qualifying offense was also reflective of his frotteuristic interests.

#### Opioid Use Disorder and Alcohol Use Disorder

According to the DSM-5, the essential feature of a substance use disorder is "a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems." Having met and endorsed the all criteria associated with the diagnosis of the substance use disorder, Mr. Tellez's reported pattern of heroin and alcohol use meets the severe level of specified substance use disorders.

#### Consideration of Antisocial Personality Disorder

A diagnosis of antisocial personality disorder describes a pervasive pattern of disregard for and violation of the rights of others, occurring since age 15 years. Mr. Tellez shows many of the characteristics of antisocial personality disorder including repeated rule-breaking behaviors, impulsivity, irritability and aggressiveness, reckless disregard for the safety of self or others, and lack of remorse. His history reflected sufficient numbers of the diagnostic criteria for antisocial personality disorder except that I do not have evidence of a Conduct Disorder prior to age 15. Due to the absence of such information, I did not diagnose him with antisocial personality disorder.

#### Emotional/Volitional Capacity

A mental disorder is a necessary but not sufficient condition for concluding an individual meets the WIC 6600 definition of "diagnosed mental disorder." To be a qualifying diagnosed mental disorder under the statute, the individual's mental condition must

affect his or her current emotional and/or volitional capacity. To find emotional and volitional impairment does not mean the individual must exhibit a complete lack of control; rather, he has exhibited serious difficulty controlling his behavior. In my opinion, Mr. Tellez's frotteuristic disorder predisposes him to a sex crime. Moreover, his alcohol and opioid use disorders, as well as antisocial personality traits facilitate his offenses by likely disinhibiting his self-regulatory ability, allowing him to disregard the feelings and rights of others and the potential negative consequences. His diagnosis of frotteuristic disorder produced in him an emotional state (i.e., thoughts, feelings, and biological changes associated with sexual arousal) that resulted in him engaging in repeated sexual behaviors with nonconsenting people. This is demonstrated by his inability to appreciate the negative emotional impact his behavior had on his victims.

Moreover, he has been detected and sanctioned for his problematic sexual behaviors since 1991. He continued to recidivate by touching people for sexual arousal and gratification without their consents even when he was on probation or parole. During my interview, he told me that he has a problem relating to sexual offenses. His qualifying offense was committed in 2017 involving three minor victims. As such, his emotional and volitional capacity continues to be affected by his frotteuristic disorder.

#### Criterion B Conclusion

I diagnosed Mr. Tellez with a diagnosable mental disorder that is a congenital or acquired condition affecting his emotional and volitional capacity in a manner that predisposes him to the commission of criminal sexual acts in a degree constituting him a menace to the health and safety of others. Criterion B is met.

#### **C. Is the inmate likely to engage in sexually violent predatory criminal behavior as a result of his or her diagnosed mental disorder without appropriate treatment and custody? – YES**

I scored Mr. Tellez on an actuarial sex offender risk assessment instrument, examined his dynamic risk factors, and drew conclusions regarding his risk to engage in sexually violent predatory acts in the future.

#### *Static Risk Assessment*

I examined Mr. Tellez's unique behavioral history in light of risk factors found in the research to be significantly related to sexual re-offense. As part of this assessment, I used the Static-99R, an actuarial tool. The actuarial method uses certain static (or historical and unchanging) information and compares the score of the person being evaluated against a group of offenders who scored similarly and later re-offended over the course of years. It is important to note that actuarial instruments do not *predict* whether an *individual* will reoffend. Rather, they provide a comparison of the individual to groups of offenders with known re-offense rates to *estimate risk*. The risk assessment process cannot ultimately determine if a given individual will or will not commit another sex offense. Such levels of certainty and precision are not possible. That said, the

actuarial measure used here is considered a moderate estimation of sexual reoffense and serves as a general guide as to the level of risk.

Mr. Tellez's score on the Static-99R and associated data follow (the score sheet is in the Appendix attached to this report).

Instrument	Score	Risk Category	Percentile	Relative Risk Ratios	Recidivism Estimates			
					5-yr. Est.		10-yr Est.	
					Routine	High Risk	Routine	High Risk
Static-99R	6	Well Above Average Risk	94.2	3.77	20.5	25.7	.*	37.3

\*Ten-year re-offense estimate is not yet available for the Routine sample group.

Information is presented about Mr. Tellez's *raw score*, *risk category*, *relative risk level* and *absolute risk level* for the Static-99R. A *raw score* is simply the total score of the instrument. *Relative risk* is a comparison of the individual's score to the scores obtained by other sex offenders and is described using *percentiles* and *odds* of sexual reoffense for a given score as compared to other possible scores. *Percentiles* refer to the percentage of individuals within the samples that scored higher than, the same as or less than the score obtained by Mr. Tellez. *Relative risk ratios* describe a given offender's *odds* of sexual re-offense as compared to the "typical" sex offender. In other words, a given offender's score might represent half the risk, or twice the risk, of a "typical" offender.

*Absolute risk* estimates are based on a comparison of the individual's score to groups of offenders with similar scores and known reoffense rates (based on *new charges and/or convictions* for a sexual offense within a defined period of time). The absolute risk estimate is expressed as a percentage, meaning that the individual is compared to groups with certain rates (percentages) of reoffense.

In respect to the recidivism estimates, the position of the Static-99R's developers is that the variability across samples can best be explained by differences in the density of individual risk factors not already included in the scale. The developers guide evaluators by stating that determining the appropriate sample type reference group should be based on consideration of psychologically meaningful risk factors, also known as dynamic risk factors, criminogenic needs, and psychological vulnerabilities. As a general guideline, the developers recommend the routine norms should be used. The preselected high risk/needs norms should be reserved for offenders with pronounced external psychologically meaningful risk factors.

The routine samples were referenced because they are a relatively random sample from a correctional system, and these samples represent the full population of all offenders before any preselection process. This group represents a hypothetical average of all sex offenders.

### *Absolute Risk*

In routine samples with the same raw score as Mr. Tellez, the 5-year estimated sexual recidivism rate is 20.5%. The estimated rate falls between 18.4% and 22.8%, 19 times out of 20. A predicted recidivism rate of between 18.4% and 22.8% means that out of 100 sexual offenders with the same risk score between 18 and 23 would be convicted of a new sexual offense after 5 years in the community. Conversely, between 77 and 82 would not be convicted of a new sexual offense during that time period.

In relation to the above recidivism estimates, recidivism is defined as a charge or conviction for a new sexual offense. The risk estimates were derived from logistic regression, which takes into account the recidivism rate associated with a single score in the context of the overall relationship between the measure and recidivism. This reduces the influence of unreliable, random variations in the observed recidivism rates that are due to fewer subjects within a given subgroup.

### *Relative Risk*

The percentile rank associated with the Static-99R score is provided to show Mr. Tellez's relative risk compared to other sex offenders. The percentile represents the percent of sexual offenders estimated to have a score lower than Mr. Tellez. His Static-99R score of 6 represents the 94.2 percentile. Approximately 92.4% of sexual offenders would have lower scores, and approximately 4.0% would have higher scores. Approximately 3.6% would have the same score as Mr. Tellez.

With regard to his relative risk ratio, the recidivism rate for sex offenders with the same score as Mr. Tellez would be expected to be approximately 3.77 times the recidivism rate of the typical sexual offender (defined as a median score of 2).

The above values are based on the table entitled "Static-99R Routine Sample: Estimated 5-year Sexual Recidivism Rates" in Phenix, Helmus Hanson (October 19, 2016) Static-99R & Static-2002R Evaluators' Workbook. Available from [www.Static99.org](http://www.Static99.org).

### *Dynamic Risk Assessment*

I assessed Mr. Tellez's dynamic risk factors external to Static-99R using an empirically informed review of how he conducts himself and what may motivate certain behaviors. A dynamic risk factor refers to something that has the capacity to change over time, for example with treatment. Mann, Hanson, and Thornton (2010) identified the psychologically meaningful risk factors that had the strongest empirical support. Such risk factors can be conceptualized as individual propensities, which may or may not manifest during any particular time period, and propensities are enduring characteristics that lead to predictable expressions of thoughts, feelings, or behaviors. While no single risk factor is strongly related to risk by itself, a wide range of factors is considered and assessed in an empirically guided fashion. Descriptions of the risk factors are provided

below.

In order to rate these items, an approach similar to those used in other structured professional judgment approaches was used. "Present" signifies the presence of a factor, "Partially Present" signifies that some evidence that the factor exists and "Absent" signifies the absence of any evidence that the factor is present. The rating of "Omit" was marked when the information was insufficient to score on the factor.

Risk Factor	Present	Partially Present	Absent	Omit
1. Sexual Preoccupation		x		
2. Sexual Preference for Prepubescent or Pubescent Children			x	
3. Sexualized Violence		x		
4. Multiple Paraphilias			x	
5. Offense-Supportive Attitude				x
6. Emotional Congruence with Children			x	
7. Lack of Emotionally Intimate Relationship with Adults	x			
8. Lifestyle Impulsivity	x			
9. Poor Cognitive Problem Solving	x			
10. Resistance to Rules and Supervision	x			
11. Grievance/Hostility		x		
12. Negative Social Influence	x			

Sexual Preoccupation - This variable refers to an abnormally intense interest in sex that tends to dominate psychological functioning. Sex is engaged in for itself, "as a way of defining the self, or as self-medication." An individual demonstrating sexual preoccupation would substantially overlap with "someone described as having sexual compulsions, sexual addiction, and hypersexuality."

Partially Present – Mr. Tellez described that he had used masturbation as a way to reduce his stress. He endorsed a daily sexual activity as well as the usage of pornography and visits to strip clubs, adult bookstores, and prostitutes. This factor is at least partially present.

Sexual Preference for Prepubescent or Pubescent Children - For the purposes of defining this construct, children would include females up to 12 years of age and males up to 13 years of age. Children are identified by the relative absence of physical cues typically indicative for the ability to mate and reproduce (e.g., a degree of body/pubescent hair, body shape, musculature/ breast/genital development). Pedophilic interests can be identified by self-report, offense history, or specialized testing.

Absent – Although Mr. Tellez's victim of recent sex crime was a 13-year-old victim, she would not be considered a child victim based on this factor. Besides this victim, his historical victims of sex crimes had been all adult females.



Sexualized Violence - This element is related to an interest in sadism or a preference for coercive sex over consenting sex. It should be noted that even though available data support sexualized violence as a risk factor, the evidence is not as strong as that for sexual interest in children.

Partially Present – By self-report, Mr. Tellez indicated that his 1999 arrest for attempted rape involved his ex-girlfriend who had consented to the sexual activity. Despite her consent, he explained that the sexual act somehow became aggressive and forceful, which resulted in either she or the neighbor to contact the police. Therefore, some evidence for this factor is present.

Multiple Paraphilias - The presence of two or more "rare, unusual, or socially deviant interests" in persons, objects, or activities.

Absent – There was no indication that this factor is present.

Offense-Supportive Attitude - "Beliefs that justify or excuse sexual offending in general." This is different from the excuses offenders provide to excuse or justify their own specific offenses; a single act of sexual offending does not necessarily support the existence of such.

Omitted – Mr. Tellez expressed the cognitive distortion involving some of his victims (e.g., they gave consent) and justifications for his offenses (i.e., accident). However, he did not endorse the attitude or beliefs concerning sexual offending in general. Given his repeated offending despite being detected and sanctioned, I suspect that there might be an underlying attitude that supports his actions. I decided to omit this factor.

Emotional Congruence with Children - The feeling "relationships with children to be more emotionally satisfying than those with adults." They "may find children easier to relate to than adults, may feel he is still like a child himself and may believe that children understand him better than adults do. He often feels to be 'in love' with his child victims, as if the relationship was reciprocal."

Absent – There was no indication that Mr. Tellez finds the relationships with children to be more emotionally satisfying than those with adults or easier to related to children than adults.

Lack of Emotionally Intimate Relationships with Adults - The absence of intimate relationships with adults or the presence of intimate relationships marred by repeated conflict and/or infidelity.

Present – Mr. Tellez has a history of violence against his girlfriends to the point where he was arrested and convicted on numerous occasions for battery against spouse/partner, as well as one (or more) of his girlfriend had taken out a restraining

order against him. Also, there was a report where he had written threatening letters to one of his ex-girlfriend.

Lifestyle Impulsiveness - "Refers to low self-control, chronic instability in employment and housing, lack of meaningful daily routines, irresponsible decisions, or limited/unrealistic long-term goals." A history of substance abuse was also considered an indicator of such.

Present – Mr. Tellez had described a history of chronic instability in employment, largely due to substances use. His use of the substances had led to irresponsible decisions and interpersonal conflicts, as well as many incidents of criminal activities including stealing and selling drugs to support his habits.

Poor Problem Solving - "Poor cognitive problem-solving involves difficulties generating and identifying effective solutions to the problems of daily living." This includes not addressing obvious problems, the use of ineffective problem-solving skills, as well as difficulties in problem recognition, lack of consequential thinking, and difficulty generating a wide range of options.

Present – Mr. Tellez's criminal history reflected the lack of problem recognition and lack of consequential thinking. He continued to make the same or similar mistakes. He also failed to utilize the available solutions (e.g., treatment program, the criminal justice intervention) effectively.

Resistance to Rules and Supervision - Rule-breaking and opposition to external control (e.g., rule violations, non-compliance with supervision, and violation of conditional release).

Present – Mr. Tellez has had many probation and parole violations and revocations.

Grievance/Hostility - "The perception that they have been done wrong by the world, feeling that others are responsible for their problems, and wanting to punish others as a consequence." There is a preoccupation with "obtaining the respect they desire from others and frequently ruminate on vengeance themes." Additionally, they "have difficulty seeing other people's points of view and anticipate further wrongs will be perpetrated against them."

Partially Present – Mr. Tellez maintained that his current incarceration and being labeled as a sex offender were the result of the "evil" children who wrongfully accused him. He also described his past sex crimes as accidental, but the victims had mistaken his benign behaviors as sex crimes. When I challenged him with the inconsistencies of his self-report and the acts, he ultimately conceded that they were his "fault" in some situations. This factor appears to be partially present.

Negative Social Influences - "Having a social network dominated by individuals who are involved in crime, promote criminal behavior, or weaken the behavioral controls of the offender." This is also one of the strongest predictors of general criminal behavior.

Present – Mr. Tellez was unable to identify a positive social network. Although he mentions his sister, it was less likely that her involvement would result in his pro-social activity and abstinence from substance use and criminal activities, given his history.

In sum, Mr. Tellez has eight of the 12 factors present or partially present with risk including Sexual Preoccupation, Sexualized Violence, Lack of Emotionally Intimate Relationship with Adults, Lifestyle Impulsivity, Poor Cognitive Problem Solving, Resistance to Rules and Supervision, Grievance/Hostility, and Negative Social Influence. I omitted the factor, Offense-Supportive Attitude. The absent availability of information does not equate the absence of the risk factor. Thus, with additional information, he may evidence nine risk factors.

### Protective Factors

The following protective factors have been found associated with a decreased risk of future sexual offending: (1) lived in the community for a significant period without sexually reoffending, (2) advanced age, illness or physical conditions that significantly decrease the motivation and/or ability to sexually reoffend, and (3) completion of a sex offender specific treatment program.

Mr. Tellez has not lived in the community for a significant period without sexually reoffending. Although he will be 61 years old upon his release, his age, in this case, is not a protective factor because his most recent offense occurred when he was 59 years old. Also, his age has been already taken into account in estimating his actuarial risk. He does not have any medical or physical condition that would significantly decrease the motivation or ability to reoffend sexually. Based on the available information, he has not completed a sex offender specific treatment program. According to him, he was attending such a treatment program when he recidivated the most recent sex offense for which he is incarcerated presently. Therefore, none of the protective factors is present in this case.

### WIC 6600 Criteria

Next, the specific language used in WIC 6600 will be discussed to draw conclusions regarding Criterion C. That is, is Mr. Tellez "likely to engage in sexually violent predatory criminal behavior as a result of his diagnosed mental disorder without appropriate treatment and custody?

### Predatory

Predatory is defined in WIC 6600 as an act that is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of

victimization. All, except the 1999 case involving his ex-girlfriend, of Mr. Tellez's victims were strangers to him. As such, most of his past sex crimes were predatory as defined in WIC 6600. Thus, if he were to reoffend sexually, his next offense would likely be predatory in nature.

#### Alternative Sex Offender Treatment Plans

The California Supreme Court directed that the following factors should be considered with regards to whether the inmate can be effectively and safely treated in the community: 1) the availability, effectiveness, safety, and practicality of community treatment for the particular disorder the person harbors; 2) whether the person's mental disorder leaves him or her with volitional power to pursue such treatment voluntarily; 3) the intended and collateral effects of such treatment, and the influence of such effects on a reasonable expectation that one would voluntarily pursue it; 4) the person's progress, if any, in any mandatory SVPA treatment program he or she has already undergone; 5) the person's expressed intent, if any, to seek out and submit to any necessary treatment, whatever its effects; 6) any other indicia bearing on the credibility and sincerity of such an expression of intent.

I do not have information about the availability of sex offender treatment in the area Mr. Tellez will be paroled. However, sex offender treatment that addresses his type of sexual offending is often available in the community through public and private agencies and certain parole clinics. In fact, he mentioned that he had been enrolled in such a program when he was arrested for the qualifying offense. Therefore, it is questionable whether sex offender treatment can effectively mitigate and reduce his risk of recidivism. His mental disorder would not impact his volitional power to pursue treatment voluntarily. However, he is less likely to pursue sex offender specific treatment especially given the resources (e.g., financial costs) the treatment might bring forth. He stated that he must attend sex offender specific treatment if it were mandated as a condition of parole. Otherwise, he does not intend to seek sex offender specific treatment.

#### Criterion C Summary and Conclusion

Mr. Tellez is a 60-year-old male with a history of seven known sexual offenses, most of which involved a sexual battery, going back to 1991 (at age 33). He has one arrest for attempted rape in 1999 (at age 40) that was presumably committed against his then-girlfriend. Despite the repeated detection and sanction, he continued to engage in the behaviors that constituted sexual battery. I diagnosed him with frotteuristic disorder, which in my opinion predisposes him to a sex crime.

The estimate of Mr. Tellez's actuarial risk falls in the Well Above Average Risk category. He also shows moderate-high degree (eight of 12 risk factors) of dynamic risk factors. No protective factors appeared to be present that would mitigate his risk at this time. The likelihood of his responding positively to sex offender treatment is also reduced because he reoffended while he was in treatment albeit for a short duration. Taken

these factors together, Mr. Tellez presents a high risk to reoffend sexually. I also opined that Mr. Tellez's future sex crime would be predatory.

The determination of whether Mr. Tellez presents a substantial risk to commit a sexually violent offense required a closer analysis. On the one hand, the victims of his sex crimes had been adult women until his qualifying offense of 2017 (at age 58). Most of his historical sexual crime convictions had not risen to the level of the sexually violent offense listed in WIC 6600.

On the other hand, his historical offenses involved the touching or grabbing of the nonconsenting person for the purpose of sexual gratification or arousal. It could be argued that his historical sexual offenses reflected sexually violent criminal behavior regardless of whether he was prosecuted for the offense enumerated in WIC 6600. Uncertainty also remains as to the incident resulting in the arrest for attempted rape in 1999 because there was no description of the event, other than his self-report, available for review. In the recent offense, his offense had shown progression and escalation in that he physically restrained the vulnerable victim. Thus, his action surpassed the touching or grabbing of the victim's body. Based on what is known, it is likely that Mr. Tellez's future sex crime will be forcible sexual battery at a minimum. Taken all the information together, I concluded that Mr. Tellez does present a serious and well-founded risk within the meaning of WIC 6600. Criterion C is met.

### III. Conclusion

Based on the above information, it is this evaluator's professional opinion that **Mr. Tellez meets the criteria as a sexually violent predator** as described in Section 6600(a) of the Welfare and Institutions Code.

Respectfully,



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Shoko Kokubun, PhD  
CA PSY22513

# **STATIC 99R Table**

<b>Risk Factor (present = 1; not present = 0, unless otherwise noted)</b>		<b>Score</b>
1	<u>Age at Release</u> (Note: 18 to 34.9 yrs. = 1; 35 to 39.9 yrs. = 0; 40 to 59.9 yrs. = -1; 60 or < = -3) <i>Research indicates that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. Mr. Tellez's age at release is 61.</i>	-3
2	<u>Single (no two year relationship)?</u> <i>Research indicates that having a prolonged intimate connection to someone may be a protective factor against sexual reoffending. On the whole, the relative risk to sexually reoffend is lower in men who have been able to form intimate relationships. Mr. Tellez has not maintained an intimate adult relationship of at least two years.</i>	1
3	<u>Index non-sexual violence, any convictions?</u> <i>A meta-analytic review of the literature indicates that having a history of violence is predictive of future violence, including sexual violence. At the time of Mr. Tellez's Index offense, he was not convicted of a separate non-sexual violent offense.</i>	0
4	<u>Prior non-sexual violence, any convictions?</u> <i>As with item #3, having a history of violence is predictive of future violence, including sexual violence. Mr. Tellez has a history of convictions for non-sexual violence (Grand theft on person in 2009 &amp; 2012; Violation of Restraining Order in 2000, twice &amp; 2001; Battery in 1999 and 2004).</i>	1
5	<u>Prior sex offenses? (score range is 0-3)</u> <div style="margin-left: 40px;">           Note: Charges    Convictions                      None        None = 0                      1-2        1        = 1                      3-5        2-3     = 2                      6+        4+       = 3         </div> <i>A meta-analytic review of the literature indicates that having prior sexual offenses is predictive of sexual recidivism. Mr. Tellez has been charged with 14 sexual offenses, and he has been convicted of 5 sexual offenses prior to his Index offense.</i>	3
6	<u>Prior sentencing dates (excluding index)?</u> (Note: 0-3 = 0; 4+ = 1) <i>Persistent criminal offending is predictive of future criminal and sexual offending. Mr. Tellez has had 21 prior sentencing dates.</i>	1
7	<u>Convictions for non-contact sex offenses?</u> <i>The presence of non-contact paraphilic interests is associated with sexual recidivism. Mr. Tellez has not been convicted of a non-contact sexual offense.</i>	0
8	<u>Any unrelated victims?</u> <i>Research indicates that offenders who have unrelated victims sexually reoffend at a higher rate than offenders with related victims. Mr. Tellez has [does not have] unrelated victims.</i>	1
9	<u>Any stranger victims?</u> <i>Research shows that having a stranger victim is related to sexual recidivism. Mr. Tellez has offended against strangers.</i>	1
10	<u>Any male victims?</u> <i>Research indicates that offending against males is correlated with sexual recidivism. Mr. Tellez has male victims.</i>	1
<b>Total Score = 6</b>		



## California Department of State Hospitals

1600 9<sup>th</sup> Street, Suite 410, Sacramento CA 95814  
(916) 653-1843

### WIC 6600 EVALUATION

CONFIDENTIAL PATIENT INFORMATION PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 5328

#### I. IDENTIFYING DATA

Name:	Tellez, Victor
Date of Birth:	7-28-58
CDCR Number:	BF2983
CII Number:	A22941675
Facility:	San Quentin State Prison
CDCR Release Date:	9-10-19
County of Commitment:	San Diego
Interview Date:	2-20-19
Date Report Completed	3-18-19
Criteria A:	Yes
Criteria B:	Yes
Criteria C:	Yes
Outcome:	Positive
DMH Evaluator:	G. Preston Sims, Ph.D.
Telephone Number:	(619) 607-2672

Department of State Hospitals  
I declare that this is a true and correct copy  
of the original document. To the best of my  
knowledge, the DSH Evaluator is qualified  
pursuant to WIC 6601 (d) and/or (g).

  
3/20/19  
Signature and Date

#### Notice of Evaluation:

As a Sexually Violent Predator Evaluator for the California Department of State Hospitals, the undersigned received the assignment to evaluate Mr. Tellez on 1-29-19. He was interviewed in person by this evaluator on 2-20-19 at San Quentin State Prison in a private office for approximately one hour. Issues of confidentiality and mandated reporting were explained to him. He was read aloud the Notification of Evaluation as a Sexually Violent Predator Form, which provides information about the interview process. He agreed to be interviewed and signed the notification form accordingly. He declined to retain a copy of this form.

#### DECS:

The Disability Effective Communication System (DECS) Report is a document that lists the known disabilities for each inmate in the California prison system. This document was reviewed and it indicated for the evaluator to read and speak slowly, which this evaluator made every effort to do.

## EVALUATION PROCEDURES

- Record Review

Information received from the Department of State Hospitals:

1. Board of Parole Hearings Sexually Violent Predator Screening, dated 1-20-19
2. San Diego County Superior Court Case Number SCE369196 Abstract of Judgment, dated 1-2-18
3. San Diego County Superior Court Case Number SCE369196 Felony Complaint, dated 3-29-17
4. El Cajon Police Department Arrest Report, dated 3-25-17, 6-11-14
5. El Cajon Police Department Probable Cause Declaration for Warrantless Arrest, dated 3-25-17
6. Probation Officer's Report, dated 4-16-18
7. San Diego Regional Arrest Contact Report, dated 12-5-91, 9-26-16, 10-8-15
8. Department of Justice Criminal History (CLETS Report), dated 1-29-18, 11-25-98
9. FBI Criminal History, dated 1-29-18
10. Rules Violation Report, dated 6-15-94, 6-2-94, 6-1-94

Requested but not received: Mental Health Documentation from the CDCR Medical Record from San Quentin State Prison

- Interview
- Mini-Mental State Examination-2
- Static-99-Revised (Static-99R)
- Static-2002 Revised (Static-2002R)<sup>1</sup>
- Hare Psychopathy Checklist-Revised, 2<sup>nd</sup> Edition (PCL-R, 2<sup>nd</sup> Ed.)
- Structured Risk Assessment- Forensic Version (SRA- FV)

## **II. FINDINGS:**

**A. Has Mr. Tellez been convicted of a sexually violent criminal offense against one or more victims? YES**

### Sexually Violent Predator (SVP) Criteria:

The following felony offenses qualify as "Sexually Violent Offenses": Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5 or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code. In addition to having

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<sup>1</sup> The Static-2002R was used in addition to the Static-99R due to 1) Improvements in the item content form Static-99R (Hanson, R. K., Helmus, L., & Thornton, D. (2010). Predicting recidivism among sexual offenders: A multi-site study of Static-2002. *Law and Human Behavior*, 34, 198-211 and 2) it has been found to yield additional information over and above that provided by the Static-99R (Babchisin, K.M., Hanson, R.K. Helmus, L. (2012). Even highly correlated measures can add incrementally to predicting recidivism among sex offenders. *Assessment*, 19(4), 442-461).



one of these qualifying offenses, in order for Criterion A to be positive, one or both of the following must be met: 1.) The victim must be a child under the age of 14. 2.) Force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or threatening to retaliate in the future against the victim or any other person must be present.

WIC 6600 Qualifying Offenses:

Victim 1: Zakyra W., female, age 13, San Diego County Superior Court Case Number SCE369196, 2017

Date:	Count:	Charge/Offense:	Disposition:	Victim
3-25-17	1	PC 288(a), Lewd Act Upon Child	12-11-17, Dismissed	Joel T., under 14,
3-25-17	2	PC 288(a), Lewd Act Upon Child	12-11-17, Dismissed	Alfredo S., under 14
3-25-17	3	PC 288(a), Lewd Act Upon Child	12-11-17, Convicted, Felony, 3 years prison	Zakyra W., under 14

According to the El Cajon Police Department Arrest Report, dated 3-25-17:

The arrestee, Tellez, was walking around the Fletcher Parkway Mall in El Cajon. Tellez approached three male juveniles who were sitting in a relaxation/waiting area near the food court. Tellez laid down behind the boys, who are ages 13, 10 and nine, and ran his open hand across the backs of the nine and 10-year-old boys. The boys all got up and walked quickly away, with Tellez following them. Tellez then approached a 13-year-old female from behind and wrapped both his arms around her waist. Tellez said to her, "Come here" as he was grasping her. The female swung around and pulled away from Tellez. Mall security was contacted.

Officers were notified of the incident by mall security via radio. Officers responded to the food court area where the juveniles, as well as Tellez, were located. Tellez was wearing a purple backpack and appeared to be walking in an erratic, circular manner. One of the security guards immediately pointed at Tellez and told officers that was him. Tellez immediately tried to leave and was detained by being grabbed on each arm by the officers. Tellez had an odor of an alcoholic beverage upon his breath. Tellez did not want to give information and didn't want to say anything.

When asked by this evaluator what occurred in this offense, Mr. Tellez stated:

"I was drinking. Things are kind of sketchy. I touched some teenagers and a girl in an inappropriate way and called her names. They thought it was inappropriate that I touched a guy. (Do you remember wrapping your arms around the 13-year-old girl?) I don't remember."

### **Discussion of WIC 6600 Qualifying Offense:**

Although the question of whether WIC 6600 offenses qualify as such is ultimately determined by the trier of fact, evaluations in this jurisdiction (the State of California) typically include a statement by the evaluator as to whether offenses qualify per WIC 6600. In the opinion of this evaluator, this offense (PC 288(a)) meets the criteria as a WIC 6600 qualifying offense because it is cited in the statute and because the victim was under the age of 14.

### **Criterion A Summary:**

As noted above, Mr. Tellez was convicted of a sexual offense against one victim. In the opinion of this evaluator, this offense meets the criteria as a WIC 6600 defined "sexually violent offense." Therefore, it is my opinion that Mr. Tellez meets the first of the three criteria to be eligible for commitment as a sexually violent predator.

### **B. Does Mr. Tellez have a diagnosed mental disorder affecting his emotional or volitional capacity that predisposes him to the commission of criminal sexual acts? YES**

Due to the question in Criterion B of this report referring to a diagnosed mental disorder, it is routine for evaluators to utilize the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) as a guide in making the diagnosis of said mental disorder. Toward that end, Mr. Tellez's psychosocial and criminal histories will be presented here. His diagnosis will be discussed. A discussion of alternative hypotheses regarding his diagnosis and why they were rejected by this evaluator will be presented. A summary of this evaluator's opinion of whether or not he has a WIC 6600 qualifying mental disorder completes this section.

### **Current Mental Status and Observations:**

Mr. Tellez was oriented to person, place, time, and the purpose of the evaluation (he knew who he was, where he was and the time and the purpose of the evaluation). He appeared to be in no acute distress at the time of the interview. He was cooperative throughout the interview process. His affect was congruent with his mood which was mostly serious and appropriate to the situation. He attempted to present himself in a very favorable light.

Overall, Mr. Tellez's thoughts were organized and goal-directed. His immediate and short-term memory appeared compromised as indicated by his ability to recall one out of three words after a five-minute delay. His concentration appeared compromised due to his inability to complete serial sevens (repeatedly subtract 7 from 100). On the Mini Mental State Exam he received a score of 21 out of 30 points. This is a score that is associated with some degree of cognitive impairment.

### **Psychosocial History:**

The following background information, unless otherwise noted, is based on the interview with Mr. Tellez and is unverified.

### Background Information:

Mr. Tellez stated he was born in Tijuana, Mexico and raised in San Diego. His parents are deceased. He has one sister who he writes to every month. He stated that he has an elder brother who is deceased and one sister who remains alive. Both siblings have had substance abuse problems. He denied having been physically, emotionally or sexually abused as a youngster. When asked about a variety of antisocial behaviors under the age of 18, he stated only that he stayed out late at night despite parental prohibitions approximately once a week beginning at age 15.

### Educational History:

Mr. Tellez reported that he finished 11<sup>th</sup> grade.

### Employment History:

Mr. Tellez indicated that he worked in food service, landscaping and janitorial duties. He reported that the longest job he held was for approximately one year. He stated that he was fired "quite a few times" for absenteeism.

### Relationship History:

Mr. Tellez reported that the longest he lived with a significant other was two months. When asked if he had physical altercations with girlfriends, he stated, "maybe twice." He has no children.

### Sexual History:

Mr. Tellez estimated his total number sexual partners at five and stated that none of these were one-night stands. He reported he viewed pornographic magazines approximately once a day. He stated that he had attended X-rated or topless bars approximately 20 times. He reported that he had visited prostitutes on two occasions. He stated that he had used drugs and alcohol to influence a person to be sexual with him on two occasions. When asked about a variety of other sexual problems and types of sexual deviancy, he denied all of these.

Asked why he had so many sex offenses (see Criminal History section below), Mr. Tellez stated, "It's a bad habit, I guess." He was asked why he would continue to grab people after serving previous prison terms [sic], and he stated, "This is my first prison term for this behavior... This time I got three years." (This evaluator listed Mr. Tellez's offenses for him as occurring in 1991, 1993, 1999, 2000, 2004, 2014, 2015, 2016 and 2017 and then asked him why he could not refrain from the offenses in 2017. He stated,

"I know it looks bad, but I'm not a bad person. When I drink, I make bad decisions. I'm not proud of it. I'm remorseful. They said remorseful brings reconciliation. So I want to apologize for my behavior to stop drinking... Stop the behavior what got me into this problem that I'm in right now."

When asked why he didn't date women to achieve his sexual goals, he stated, "My drinking. I spent too much time drinking alcohol and being self-centered, not being social." Asked if he found people resisting his sexual advances as sexually arousing, he stated, "It just happened as an impulse- like a prank. I was not looking for sexual gratification."

When asked to estimate his risk for sexual reoffense, Mr. Tellez stated, "40%." When asked why this would be the case, he stated, "If I drink and do drugs, I know I might reoffend. I need to stop drinking and using." When asked if he thought he needed any treatment for his sexual offense behavior, he stated, "Yes." When asked where he would go for said treatment, he stated, "POC," referring to "Parole Outpatient Clinic," which typically does not include actual sex offense specific therapy.

#### Substance Use History:

Mr. Tellez stated that he began drinking alcohol once a month at age 16. He stated that his alcohol use peaked in his 20's when he drank approximately three 40-ounce beers a day. He stated that several times he would stop drinking, go into a detox program, and relapse. When asked about symptoms of Alcohol Use Disorder, Mr. Tellez endorsed all of these (see Diagnosis section below).

Mr. Tellez stated that he smoked one marijuana cigarette every day beginning at age 15. He reported, "I was not really hooked to it. I could control it." He reported "trying" crystal meth and using cocaine one or two times. He stated that heroin was his drug of choice which he used from age 18 to "recently." He reported using a quarter gram daily. When asked about symptoms of Opioid Use Disorder, he endorsed all of these (see Diagnosis section below).

#### Criminal History and Institutional Adjustment:

According to the Department of Justice Criminal History (CLETS Report), dated 1-29-18, Mr. Tellez has the following criminal history:

Date:	Charge/Offense:	Disposition:
2-8-77	PC 11377, Possess Controlled Substance	3-4-77, Drug Diversion, 6 months Diversion
	PC 647(F), Disorderly Conduct: under Infl Drug	None listed
7-1-79	PC 647(F), Disorderly Conduct: under Infl Drug	None listed
7-27-80	HS 11550, Use/Under Influence Control Substance	9-22-80, Prosecutor Reject/Rel Detention Only
	BP 4143(A), Possess Hypodermic Needle/Syringe	9-22-80, Prosecutor Reject/Rel Detention Only
8-1-80	PC 459, Attempted Burglary	8-18-80. PC 459 Burglary, Dismissed

5-17-82	Warrant, PC 484, Petty Theft	5-18-82, PC 484/488, Theft/Petty Theft, Dismissed/FOJ/Plea to Other Charge
	PC 602(J), Trespass: injure Property	5-18-82, Convicted, Misdemeanor, 3 years probation, 2 days jail
7-17-83	HS 11550, Use/Under Influence Control Substance	7-29-83, Pros Reject/Lack of Corpus
1-27-84	PC 475A, Possess Bad Check/Money Order	4-13-84, Dismissed
		4-13-84, PC 470. Forgery, Dismissed
		4-13-84, PC 496.1, Receive/Etc. Known Stolen Property, Dismissed
10-20-84	Warrant, PC 470, Forgery	11-21-84, Dismissed/FOJ/plea to Other Charge
	Warrant, PC 475A, Possess Bad Check/Money Order	11-21-84, Dismissed/FOJ/plea to Other Charge
	Warrant, PC 496.1, Receive/Etc. Known Stolen Property,	11-21-84, Convicted, Misdemeanor, 3 years probation, 18 days jail, 3-9-87, Probation Reinstated, 63 days jail, work, 6-19-85, Probation revoked
4-8-88	PC 666, Petty theft w/pr Jail: Spec Offenses	4-24-88, Pros Rej- Lack of Corpus
8-29-90	PC 484/488 Theft/Petty Theft	8-29-90, Dismissed/FOJ/Plea to Other Charge
12-5-91	PC 243.4, Sexual Battery	5-24-93, PC 243.4(D), Sexual Batt: Sexual Arousal, Convicted, Misdemeanor, 3 years probation, 30 days jail, 10-6-95, Probation Extended 2 years
	PC 236, False Imprisonment	12-18-91, Pros Rej- Lack of Corpus
	PC 242, Battery on Person	None listed
	PC 242, Battery on Person	None listed

According to the San Diego Regional Arrest Contact Report, dated 12-5-91:

Officer... responded to the Horton Plaza shopping mall to investigate a battery with a suspect in custody. Upon arriving, I (contacted)... the security guard... who told me they had taken Tellez into custody for battery on three female victims.

I contacted the first victim G. who told me the following: G. told me that she and R. S. were in the gallery when Tellez entered the gallery. Tellez walked up to them and asked them their names and other questions. G. became

concerned because Tellez was acting weird. G. basically ignored Tellez by typing on her typewriter. G. then said that Tellez walked up behind her, bent over her and put his hand up her skirt and grabbed her vagina with force. G. attempted to get away, but Tellez would not let her up. Tellez continued grabbing G.'s vagina. By this time G. slapped Tellez, stunning him and causing him to back up. G. got up and yelled at Tellez to get out. Tellez then casually walked out. G. stated she was held down for approximately three seconds. She also stated that Tellez was at the store for approximately eight minutes. After Tellez left, G. called mall security and advised them of the incident.

After speaking with G., I spoke with the second victim, Robin S., who told me the following: S. told me she was working at the fragrance counter when Tellez approached her and got very close to her. S. backed up and Tellez again got very close. S. stated she backed up 4 to 5 times because Tellez kept getting too close to her. S. then walked behind the fragrance counter and asked Tellez if he needed help. Tellez began asking about the different colognes. S. showed Tellez the colognes. Tellez grabbed her hands. S. pulled away and Tellez again grabbed her hands. S. said Tellez grabbed her hands approximately five times. S. then told Tellez that she couldn't help him and she called store security. At this point, a store security guard arrived and told Tellez he would have to leave. Tellez then left that area.

I then spoke with M. (security officer), who told me the following: M. told me that she received a phone call that a male was causing a problem at the fragrance counter on the fourth floor. She arrived at the location and saw Tellez harassing S. M. told Tellez he would have to leave. At this point, Tellez left. M. then went to the first floor where she saw Tellez harassing another female employee. M. confronted Tellez, identified herself as store security and told Tellez to leave the store. M. then escorted Tellez towards the exit doors. Prior to exiting, Tellez turned around and lightly slapped M. in the face. Tellez then exited the store (note: M. and S. work at Nordstrom's).

Asked what occurred in this offense by this evaluator, Mr. Tellez stated:

"I was drunk. I touched a lady. I grabbed her butt. I left. She called the cops. I got arrested. (Do you remember a second woman being involved?) I don't remember. I think there was only one."

Date:	Charge/Offense:	Disposition:
5-20-93	Contempt, PC 243.4(D), Sexual Batt: Sexual Arousal	8-16-05, No Disposition Information Available
	Contempt, HS 11550(A), Use/Under Influence Controlled Substance	8-16-05, No Disposition Information Available

There was no additional information regarding this offense in the accompanying documents. When asked about this offense by this evaluator, Mr. Tellez stated, "I don't remember."

Date:	Charge/Offense:	Disposition:
7-9-93	VC 23175, DUI w/Prior Specific Convictions	8-20-93, Felony Drunk Driving, Convicted, Felony, 2 years prison
	PC 148, Obstructs/Resists Public Officer	7-23-93, Dismissed/FOJ/Plea to Other Charge
	PC 166.4, Disobey Court Order/Process	7-23-93, Dismissed/FOJ/Plea to Other Charge
12-12-94	PC 273.6, Violate Court Order to Prevent Domestic Violence	12-28-94, Convicted, Misdemeanor, 180 days jail
3-20-95	Violation of Parole	To Finish term
10-4-95	Contempt, PC 243.4(D), Sexual Batt: Sex Arousal	None listed
10-29-95	HS 11550(A), Use/Under Infl Controlled Substance	1-9-96, Pros Rel- Det Only- Lack of Suff Evid
11-20-95	Violation of Parole	To finish term
4-1-96	Violation of Parole	To finish term
10-21-96	PC 273.5(A), Inflict Corporal Injury Souse/Cohab	10-23-96, Pros Rel- Det Only- Interest of Justice
2-7-97	PC 242-243(A),	Dismissed
	PC 236, False Imprisonment	Dismissed
	PC 42217(B)(4)	Dismissed
	PC 273.5(A), Inflict Corporal Injury Spouse/Cohab	2-7-97, Convicted, Misdemeanor, 365 Days jail
2-13-97	Violation of Parole,	To Finish term
10-5-98	Violation of Parole	To Finish term
3-27-99	CP 594(B)(4), Vandalism: Spec Dollar Amount	3-31-99, Convicted, Misdemeanor, 3 years probation
7-1-99	PC 261(A)(2), Attempted Rape: Force/Fear/Etc.	7-7-99, Pros Rel- Det Only- Other
	PC 422, Threaten Crime w/ Intent to Terrorize	7-7-99, Pros Rel- Det Only- Other

	PC 236, False Imprisonment/Violence/etc.	7-7-99, Pros Rel- Det Only- Other
	PC 243(E)(1), Bat: Spouse/Ex Spouse/Date/etc.	7-7-99, Pros Rel- Det Only- Other
	PC 243.4(A), Sexual Battery	7-7-99, Pros Rel- Det Only- Other

There was no additional information in the accompanying documents regarding this offense. It was unclear whether the listed offenses involved the same or a different incident than the offenses listed below.

Date:	Charge/Offense:	Disposition:
7-20-99	PC 136.1(A), Prevent/Dissuade Witness/Victim	7-20-99, Dismissed/Plea to Other Charge/FOJ
	PC 243.4(A), Sexual Battery	7-20-99, Dismissed/Plea to Other Charge/FOJ
	PC 236, False Imprisonment/Violence/etc.	7-20-99, Dismissed/Plea to Other Charge/FOJ
	PC 422, Threaten Crime w/ Intent to Terrorize	7-20-99, Dismissed/Plea to Other Charge/FOJ
	PC 243.4(A), Sexual Battery	7-20-99, Convicted, Misdemeanor, 365 Days jail

There was no additional information regarding this offense in the accompanying documents. When asked about this offense by this evaluator, Mr. Tellez stated:

"I lived with a significant other. I was charged with sexual battery. Me and my old lady, we got into it one night. She got scared and called the cops. She said I tried to force her. They told me to plead guilty to sexual battery. (Did you hit her?) No, I just held her. (Did you have sex with her against her will?) Yeah. (Did you find it sexually arousing that she was resisting?) No."

Date:	Charge/Offense:	Disposition:
7-17-99	PC 273.5, Inflict Corporal Injury on Spouse/Cohab	None listed
4-11-00	PC 273.6(A), Violate Court Order to Prevent Domestic Violence	4-26-00, Dismissed
	PC 273.6(A), Violate Court Order to Prevent Domestic Violence	4-26-00, Convicted, Misdemeanor, 365 Days jail
11-1-00	PC 273.6(A), Violate Court Order to Prevent Domestic Violence	11-29-00, Dismissed
	PC 273.6(A)	11-29-00, Dismissed
	PC 273.6(A), Violate Court	11-29-00, Convicted, Misdemeanor, 3 year



	Order to Prevent Domestic Violence	probation, 270 days jail, Restn
	No charge listed	11-29-00, Convicted, Misdemeanor, 3 year probation, 34 days jail,
	PC 243.4(D), Sexual Batt: Sexual Arousal	11-29-00, Dismissed

There was no additional information regarding this offense in the accompanying documents. Asked about this offense by this evaluator, Mr. Tellez stated, "I had a restraining order. I went to her house. There was no interaction of any kind."

Date:	Charge/Offense:	Disposition:
7-22-01	PC 136.1(B)(1), Att Prevent/etc. Victim/Etc: Report	8-1-01, Convicted, Misdemeanor, 3 years probation, Consecutive
	PC 148(A)(1), Obstruct/Etc. Public Officer/etc.	None listed
	PC 273.6(A), Violate Court Order to Prevent Domestic Violence	8-1-01, Dismissed/FOJ/Plea to Other Charge
	PC 273.6(A), Violate Court Order to Prevent Domestic Violence	8-1-01, Dismissed/FOJ/Plea to Other Charge
	PC 273.6(A), Violate Court Order to Prevent Domestic Violence	8-1-01, Convicted, Misdemeanor, 3 years probation, 365 Days Jail, Rstn, Consecutive
5-3-04	PC 243.4(D)(1), Sexual Batt: Sex Arousal/etc.	5-5-04, PC 242/243(A), Battery, Convicted, Misdemeanor, 3 years probation, Fine

There was no additional information regarding this offense in the accompanying documents. Asked about this offense by this evaluator, Mr. Tellez stated, "I don't remember that one."

4-14-05	PC 488.666 Petty Theft w/pr Pt/Gt/Burg or Robb	4-14-05, Convicted, Misdemeanor, 3 years probation, 1 day jail, Fine
7-15-05	PC 666, Petty theft w/Pr Jail: spec Offenses	None listed
	PC 459, Burglary: Second Degree	7-19-05, Pros Rej- Interest of Justice
7-28-05	Unspecified Charge	7-28-05, Convicted, 11-4-08, Prob Viol/Rev and/or Reinstate w/Sen Mod
9-20-07	PC 666, Petty Theft w/pr Jail: Spec Offenses	None listed
	PC 459, Burglary: Second	None listed

	Degree	
	PC 487(A), Grand Theft: Money/Labor/Prop	9-24-07, Pros Rej- Combined w/Other Counts/Cases
10-3-07	Unspecified Charge	3-7-08, Convicted, Prob Viol/Rev and/or Reinstate w/Sen Mod
6-17-09	PC 211, Robbery	None listed
6-19-09	PC 459, Burglary	7-6-09, PC 487(C), Grand Theft form Person 2 years prison PC 459, Burglary, 2 years prison
6-25-10	PC 3056, Violation of Parole	6-30-10, To finish term
11-7-10	PC 3056, Violation of Parole	1-10-10, To finish term
5-24-11	PC 3056, Violation of Parole	5-31-11, To finish term
11-7-11	PC 666, Petty Theft w/pr Jail: Spec Offenses	11-21-01, PC 484, Theft, Dismissed 12-21-11, PC 459, Burglary, Convicted, Felony Stayed
4-27-12	PC 3056, Violation of Parole	
8-12-12	PC 3056, Violation of Parole	
9-25-12,	PC 211, Robbery	9-25-12, Released/Detention Only
9-25-12	PC 3056, Violation of Parole	
9-28-12	PC 459, Burglary	12-6-12, PC 487(c), Grand Theft form Person, 16 months prison 12-6-12, PC 459, Burglary: Second Degree, see above
6-12-13	PC 3056, Violation of Parole	None listed
6-25-13	PC 290, Failure to Register as Sex Offender	None listed
10-24-13	PC 290.018(G), PC 290 Viol Tran 30 Day Update	None listed
	PC 3000.08, Violation of Parole	None listed

12-20-13	PC 3056, Violation of Parole	None listed
4-8-14	PC 3056, Violation of Parole	None listed
4-9-14	PC 853.7, Fail to Appear After Written Promise	None listed
	PC 640(C)(3)(A), Misuse/Etc. Transit Sys Ticket	None listed
5-3-14	PC 3056, Violation of Parole	None listed
6-11-14	PC 3056, Violation of Parole	None listed
7-10-14	PC 243.4(E)(1), Sex Batt: Touch for Sex Arousal	7-30-14, Convicted, Misdemeanor, 120 Days Jail

According to the El Cajon Police Department Report, dated 6-11-14:

The victim was standing next to her car in the parking lot of Marinello beauty school. She bent over and reached into her car. Her friend was standing next to her. The arrestee, Tellez, walked up from behind and grabbed the victim's left buttock and squeezed. Tellez then looked at the victim in the eyes and walked away. The victim was uninjured. She called the police.

Asked about this offense by this evaluator, Mr. Tellez stated:

"I was drinking and walking through a parking lot and I grabbed her butt... I guess I was just trying to be a jerk. I passed by and I left. She called the cops. I left the area. I think I was waiting for the trolley. The cops showed up. That's when they got me."

Date:	Charge/Offense:	Disposition:
9-5-14	PC 3056, Violation of Parole	None listed
11-18-14	PC 3056, Violation of Parole	None listed
1-19-15	PC 3056, Violation of Parole	None listed
3-23-15	PC 3056, Violation of Parole	None listed
6-19-15	PC 3056, Violation of Parole	None listed
7-23-15, PC 290.018(A),	Sex Offender Fail Register/Etc.	Disposition Unknown
10-8-15	PC 243.4(E)(1), Sex Batt: Touch	10-22-15, Convicted, Misdemeanor, 3

	for Sex Arousal	years probation, 150 days jail
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There was no additional information in the accompanying documents regarding this offense. Asked about this offense by this evaluator, Mr. Tellez stated, "I don't remember that one."

Date:	Charge/Offense:	Disposition:
10-9-15	PC 3056, Violation of Parole	None listed
1-12-16	PC 3056, Violation of Parole	None listed
4-2-16	PC 3056, Violation of Parole	None listed
9-26-16	PC 243(E)(1), Sex Batt: touch for Sex Arousal	None listed
	PC 243(E)(1), Sex Batt: touch for Sex Arousal	None listed
	PC 3056, Violation of Parole	None listed

According to the San Diego Regional Arrest Report, dated 9-26-16:

On 9-26-16 at approximately 1300 hrs., Victor Tellez (suspect) touched Carolyn K.'s leg and buttocks without permission at the southwest of Broadway Circle and Broadway, San Diego. Tellez then touched Laura N.'s breast without permission at 400 C St., San Diego.

Asked about this offense by this evaluator, Mr. Tellez stated, "I touched this lady. I touched her."

Date:	Charge/Offense:	Disposition:
9-28-16	PC 853.7, Fail to Appear After Written Promise	None listed
	PC 640(C)(1), Fail Pr Fare: Pun Transit System	None listed
12-31-16	PC 3056, Violation of Parole	None listed
3-25-17	PC 3056, Violation of Parole	None listed

Date:	Count:	Charge/Offense:	Disposition:	Victim
3-25-17	1	PC 288(a), Lewd Act Upon Child	12-11-17, Dismissed	Joel T., under 14,
3-25-17	2	PC 288(a), Lewd Act Upon Child	12-11-17, Dismissed	Alfredo S., under 14
3-25-17	3	PC 288(a), Lewd Act Upon Child	12-11-17, Convicted, Felony 3 years prison	Zakyra W., under 14

The above offense was described in Criterion A of this report.

According to information received from the Department of State Hospitals, Mr. Tellez received the following Rules Violation Reports while incarcerated:

<u>Date</u>	<u>Violation:</u>
6-1-94	Refusing to Sign Parole Conditions
6-2-94	Failure to Report After Lunch
6-15-94	Failure to Report

**Psychiatric History:**

As previously stated, this evaluator requested mental health documents from the CDCR Medical Record at San Quentin State Prison but was refused. Thus, the psychiatric history listed below was based on the interview with Mr. Tellez.

Mr. Tellez stated that he had been treated for approximately two years with psychoactive medication at the Correctional Clinical Case Management System level. He stated that he suffers from "depression," which includes not being interested in things, isolating and being "moody." Asked if he would be depressed if he was not in prison, he stated, "I've gone through a lot of tragedies. It really took a toll on me mentally." Asked how long his depression usually lasts, he replied, "I usually drink and sometimes I drink and take medication at the same time. I know I'm not supposed to, but I do it, anyways." Asked about problems with anxiety, he stated, "I have problems with patience and problems with crowds. I'm uncomfortable speaking in front of a large crowd. It gets me uncomfortable. Maybe they're talking about me or bringing unwanted attention on myself." He denied ever having suicidal thoughts or making suicidal attempts. He denied ever hallucinating.

**Medical History:**

When asked about medical difficulties, Mr. Tellez stated that he has hepatitis C and had surgery in 1999 for a bleeding ulcer.

**Future Plans:**

When asked about his future plans, Mr. Tellez stated, "Go into the community into a sober living home. Attend all my POC appointments, the psychologist and psychiatrist that I gotta see. Stay out of prison." Asked if he had any other plans for his release, he stated, "Apply for SSI." When asked her he would like to be in his life five years from now, he stated, "In my own place, in my own home. Sober and off parole."

**Diagnosis:**

An obvious caveat regarding Mr. Tellez's diagnosis includes the fact that there was a remarkable lack of documentation regarding his past sexual offenses. Indeed, no description of the sex offenses that occurred in 1999, 2000, 2004 or 2015 was reviewed by this evaluator.

Had this information been available, it obviously may have shed additional light on the appropriate diagnosis for Mr. Tellez.

799.59	Unspecified Neurocognitive Disorder
303.90	Alcohol Use Disorder, Severe, in a controlled environment
304.00	Opioid Use Disorder, Severe, in a controlled environment
301.7	Antisocial Personality Disorder

Regarding diagnoses of Alcohol and Opioid Use Disorders, the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-V) lists the criteria for Substance Use Disorder as follows:

A. A problematic pattern of substance use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:

- 1) The substance is often taken in larger amounts or over a longer period than was intended.
- 2) There is a persistent desire or unsuccessful efforts to cut down or control substance use.
- 3) A great deal of time is spent in activities necessary to obtain the substance, use the substance or recover from its effects.
- 4) Craving, or a strong desire or urge to use the substance.
- 5) Recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home.
- 6) Continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g. arguments with spouse about consequences of intoxication, physical fights).
- 7) Important social, occupational, or recreational activities are given up or reduced because of the substance use.
- 8) Recurrent substance use in situations in which it is physically hazardous.
- 9) The substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance.
- 10) Tolerance, as defined by either of the following:
  - a) A need for markedly increased amounts of the substance to achieve intoxication or desired effect.
  - b) Markedly diminished effect with continued use of the same amount of the substance.
- 11) Withdrawal, as manifested by either of the following:
  - a) The characteristic withdrawal syndrome for the substance.
  - b) The substance (or a closely related) substance is taken to relieve or avoid withdrawal symptoms.

Mr. Tellez stated that he began drinking alcohol once a month at age 16. He stated that his alcohol use peaked in his 20's when he drank approximately three 40-ounce beers a day. He

stated that several times he would stop drinking, go into a detox program and relapse. When asked about symptoms of Alcohol Use Disorder, Mr. Tellez endorsed all of these. Thus, in the opinion of his evaluator, a diagnosis of Alcohol Use Disorder was warranted.

Mr. Tellez stated that heroin was his drug of choice which he used from age 18 to "recently." He reported using a quarter gram daily. When asked about symptoms of Opioid Use Disorder, he endorsed all of these. Thus, in the opinion of his evaluator, a diagnosis of Opioid Use Disorder was warranted.

Regarding a diagnosis of Unspecified Neurocognitive Disorder, the DSM-5 lists the criteria for this disorder as follows:

This category applies presentations in which symptoms characteristic of a neurocognitive disorder the cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet full criteria for any of the disorders of the neurocognitive disorders diagnostic class. The unspecified neurocognitive disorder categories used in situations in which the precise etiology cannot be determined with sufficient certainty to make an ideological attribution.

Mr. Tellez was listed in the DECS printout as needing assistance in being evaluated. In addition, his Mini Mental State Exam indicated some degree of cognitive impairment. Thus, in the opinion of this evaluator, a diagnosis of Unspecified Neurocognitive Disorder was warranted.

Regarding a diagnosis of Antisocial Personality Disorder, it should also be noted that the Diagnostic Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) lists the criteria for Antisocial Personality Disorder as follows:

A. There is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three (or more) of the following:

- 1) Failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest
- 2) Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure
- 3) Impulsivity or failure to plan ahead
- 4) Irritability and aggressiveness, as indicated by repeated physical fights or assaults
- 5) Reckless disregard for the safety of self or others
- 6) Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations

7) Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another

B. The individual is at least age 18 years.

C. There is evidence of Conduct Disorder with onset before age 15 years.

D. The occurrence of antisocial behavior is not exclusively during the course of Schizophrenia or a manic episode.

Mr. Tellez's failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest is indicated by his approximately 40 arrests, approximately 23 sentencing dates and numerous parole violations. His deceitfulness is indicated in his list of aliases in his CLETS Report. Mr. Tellez's impulsivity and failure to plan ahead is indicated by his numerous parole violations and rules violation reports while incarcerated. His reckless disregard for the safety of others and aggressiveness are indicated in his arrests, convictions and Rules Violation Reports Sexual Battery, False Imprisonment, Inflict Corporal Injury on Spouse, Robbery and Lewd Act Upon Child. Evidence of Mr. Tellez exhibiting Conduct Disorder prior to the age of 15 included he reported that he stayed out late at night despite parental prohibitions at approximately age 15. Thus, in the opinion of this evaluator, a diagnosis of Antisocial Personality Disorder was warranted.

A diagnosis of Other Specified Paraphilic Disorder Nonconsent was considered for Mr. Tellez, based on his repeated arrests and convictions for sexual battery. However, it appears that these events are better explained by Mr. Tellez's impulsive and antisocial nature as opposed to any particular deviant sexual interest in the nonconsenting nature of the interactions. These interactions always occur in public, are met with initial resistance by the victim and then result in Mr. Tellez ceasing to pursue them further. Thus, his sex offenses appear better explained by his impulsivity, induced on occasion partly by alcohol intoxication and by his general antisocial stance toward the world which includes taking what he wants when he wants it with a lack of concern for others. Therefore, in the opinion of this evaluator, a diagnosis of Other Specified Paraphilic Disorder Nonconcert was not warranted.

A diagnosis of Pedophilic Disorder was considered for Mr. Tellez, based on his arrest for sexual offenses with a nine and 10-year old boy. This event occurred on one day and did not result in a conviction. Thus, in the opinion of this evaluator, a diagnosis of Pedophilic Disorder was not warranted.

#### **Criterion B Summary:**

The reader is reminder that WIC 6600 defines a mental disorder in the following way:

Diagnosed Mental Disorder includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts.



In the opinion of this evaluator, there is sufficient evidence that Mr. Tellez's diagnoses of Unspecified Neurocognitive Disorder, Alcohol Use Disorder, Opioid Use Disorder and Antisocial Personality Disorder combine to create such a condition. It is important to note that there are limitations to opinions on any respondent's degree of volitional impairment. There is little, if any, scientific basis for opinions on this topic.<sup>2</sup> It is routine for evaluators to provide evidence on the degree to which a respondent reoffends sexually despite adverse consequences to indicate the existence of such impairment.<sup>3</sup>

In Mr. Tellez's case, in the opinion of this evaluator, evidence for his volitional impairment was indicated in the repetitive nature of his sexual offenses, despite receiving criminal sanctions for same. Specifically, Mr. Tellez has been charged with Sexual Battery on eight occasions in 1991, 1993, 1999, 2000, 2004, 2014 2015 and 2016. He has been convicted of Sexual Battery four times, in 1993, 1999, 2014 and 2015. In the opinion of this evaluator, Mr. Tellez's emotional capacity is affected in that he repeatedly engaged in sexual crimes despite the victim's discomfort/distress. This evaluator concluded that Mr. Tellez's mental disorders affect his volitional capacity i.e. he shows serious difficulty in controlling his behavior.<sup>4</sup> Thus, in the opinion of the examiner, Mr. Tellez does have a diagnosed mental disorder affecting his emotional and volitional capacity that predisposes him to the commission of criminal sexual acts.

**C. Is Mr. Tellez likely to engage in sexually violent predatory criminal behavior as a result of his diagnosed mental disorder without appropriate treatment and custody?  
YES**

Mr. Tellez was scored on the Static-99R and the Static-2002R, actuarial instruments that provide general base rates of sexual reoffense for offenders similar to Mr. Tellez. These instruments have been subject to multiple validation studies that have established their usefulness in estimating sexual reoffense.<sup>5</sup> In addition, factors outside the actuarial instruments, referred to as dynamic risk factors, were also examined via the Structured Risk Assessment: Forensic Version. Lastly, protective factors were examined as well as whether future sex offenses are likely to be predatory as defined by WIC 6600. A summary of this evaluator's opinion regarding his overall risk for sexual reoffense will be presented. A statement regarding this evaluator's opinion whether he is likely to engage in sexually violent predatory criminal behavior as a result of his diagnosed mental disorder without appropriate treatment and custody completes this section.

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<sup>2</sup> Witt, P. & Conroy, M.A. (2009). *Evaluation of Sexually Violent Predators*, New York: Oxford University Press.

<sup>3</sup> In *People v. Burris*, 2002, the California Court of Appeal, Fourth District, stated, "It follows that a recidivist violent sexual offender who, due to a mental disorder, is unlikely to be deterred by the risk of criminal punishment lacks control in the requisite sense."

<sup>4</sup> In *Kansas v. Crane*, 2002, the United States Supreme Court indicated that, regarding volitional impairment and involuntary commitment of persons under the Kansas SVP statute, "there must be proof of "serious difficulty in controlling behavior."

<sup>5</sup> Hanson, R. K., & Morton-Bourgon, K. E. (2009). The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment*, 21, 1-21.

Helmus, L., Thornton, D., Hanson, R.K. and Babchisin, K.M. (2012). Improving the Predictive Accuracy of Static-99 and Static-2002 with Older Sex Offenders: Revised Age Weights. *Sexual Abuse: A Journal of Research and Treatment*, 24(1), 64-101.

### Static-99-Revised (Static-99R):

Mr. Tellez was scored on the Static-99-Revised, which is an actuarial measure of risk for sexual offense recidivism. As the table below illustrates, Mr. Tellez received a total score of 6 on the Static-99R which places him in the well above average risk category for being charged or convicted of another sexual offense.<sup>6</sup>

#### **Static-99R Score Summary<sup>7</sup>**

	Risk Factor	Yes = 1, No = 0	Scores
1	Age at Release? (Score range is -3 to 1)		-3
2	Ever lived with (no two year relationship)?		1
3	Index non-sexual violence, any conviction?		0
4	Prior non-sexual violence, any convictions?		1
5	Prior sex offenses? (Score range is 0-3)		3
6	Prior sentencing dates (excluding index)?		1
7	Convictions for non-contact sex offenses?		0
8	Any unrelated victims?		1
9	Any stranger victims?		1
10	Any male victims?		1
			<b>TOTAL SCORE =</b>
			<b>6</b>
			<b>RISK CATEGORY=</b>
			<b>Well Above</b>
			<b>Average</b>

There have been a large number of studies examining the absolute sexual recidivism rates associated with Static-99 scores. Hanson et al (2016)<sup>8</sup> examined 21 Static-99R studies ( $n = 8,805$ ). The samples in these studies were drawn from Canada, the United States, the United Kingdom, Western Europe and New Zealand. The observed recidivism base rates varied considerably across samples based on factors not measured by the Static-99R. The recidivism base rates varied depending on whether the sample consisted of offenders from those deemed to be at high risk or those from a routine correctional sample. It has been postulated that one of the key differences in the sample groups was how they varied in terms of psychological risk factors, similar to those measured by the Structured Risk Assessment- Forensic Version.<sup>9</sup> In Mr. Tellez's case, his score on the Structured Risk Assessment: Forensic Version<sup>10</sup> (see below) indicated he is most similar to the Routine sample.

<sup>6</sup> Helmus, L.M. (2016). *Revised Risk Categories*, Unpublished Manuscript, 5-18-16

<sup>7</sup> For the details of the Static-99R scoring, please see the appendix of this report.

<sup>8</sup> Hanson, K.R., Thornton, D., Helmus, L.M. & Babchisin, K.M. (2016). What sexual recidivism rates are associated with Static-99R and Static-2002R scores? *Sexual Abuse*, 28(3), 218-252.

<sup>9</sup> Thornton, D., Hanson, R.K. & Helmus, L.M. (2010, Spring). Moving beyond the standard model for actuarial assessment for sexual offenders. California Coalition on Sexual Offending, CCOSO Quarterly Newsletter, Perspectives. Available from <http://www.static99.org/pdf-docs/thorntonhansonhismus2009.pdf>.

<sup>10</sup> Thornton, D. & Knight, R.A. (2013). Construction and validation of SRA-FV need assessment *Sexual Abuse: A Journal of Research and Treatment*, Des 30, 2013, 1-16.

Mr. Tellez received a score of 6 on the Static-99R. Offenders with the same score as Mr. Tellez from the routine sample have been found to sexually reoffend at a rate of approximately 20 percent in five years.<sup>11</sup> Conversely, offenders with the same score from the routine sample have been found not to sexually reoffend at a rate of approximately 80 percent in five years.

### **Static-2002-Revised (Static-2002R):**

The Static-2002R is an instrument designed to assist in the prediction of sexual and violent recidivism for sex offenders.<sup>12</sup> The results of the Static-2002R are listed below:

### **Static-2002R Score Summary**

Category	Sub-Score	Possible Range	
I. Age (1 item)	-2	-2	2
II. Persistence of sexual offending (3 items)	3	0	3
III. Deviant sexual interests (3 items)	2	0	3
IV. Relationship to victim (2 items)	2	0	2
V. General criminality (5 items)	3	0	3
TOTAL SCORE =		8	13

Hanson et al (2016)<sup>13</sup> examined 8 Static-2002R studies ( $n = 3,188$ ). The samples in these studies were drawn from Canada, the United States, the United Kingdom, Western Europe and New Zealand. The observed recidivism base rates varied considerably across samples based on factors not measured by the Static-2002R. Samples that were preselected to be high risk show the highest recidivism rate and routine correctional samples had recidivism rates that were substantially lower.

Mr. Tellez received a score of 8 on the Static-2002R. This placed him in the well above average risk category for risk of being charged or convicted of a future sexual offense. Offenders with the same score as him from the routine sample have been found to sexually reoffend at a rate of approximately 34 percent in five years.<sup>14</sup> Conversely, offenders with the same score as him from the routine samples have been found to not sexually reoffend at a rate of approximately 66 percent in five years.

### **Static Risk Summary:**

The following table provides a summary of the static risk instruments utilized:

<sup>11</sup> Phenix, A., Helmus, L., Hanson, R.K. (2015). Static-99R and Static 2002R Evaluator's Workbook. Downloaded from [www.static99.org](http://www.static99.org) on January 15, 2015.

<sup>12</sup> Babchishin K.M., Hanson R.K., and Helmus L. (2012). Even highly correlated measures can add incrementally to predicting recidivism among sex offenders, *Assessment*, 4, 442-61.

<sup>13</sup> Hanson, K.R., Thornton, D., Helmus, L.M. & Babchisin, K.M. (2016). What sexual recidivism rates are associated with Static-99R and Static-2002R scores? *Sexual Abuse*, 28(3), 218-252.

<sup>14</sup> Phenix, A., Helmus, L., Hanson, R.K. (2015). Static-99R and Static 2002R Evaluator's Workbook. Downloaded from [www.static99.org](http://www.static99.org) on January 15, 2015.

Instrument	Score	Risk Category	5-Yr. Est.	10-Yr. Est.
Static-99R	6	Well Above Average	20%	-
Static-2002R	8	Well Above Average	34%	-

### Structured Risk Assessment- Forensic Version

The Structured Risk Assessment- Forensic Version measures long-term vulnerabilities also referred to as psychological risk factors. These factors are individually predictive of sexual recidivism (Mann, Hanson & Thornton, 2010)<sup>15</sup>. These psychological risk factors have incremental predictive validity (they “add” to the predictive power of) the Static-99R and so function as external risk factors (Allen, Grace, Rutherford & Hudson, 2007;<sup>16</sup> Craig, Thornton, Beech & Browne, 2007;<sup>17</sup> Thornton & Knight, 2013<sup>18</sup>).

The factors of the Structured Risk Assessment: Forensic Version are listed as follows:

- Sexual interests domain (SID)

#### SID 1: Sexual preference for children

This item refers to an intense interest in or preference for sexual activity with children. This factor is considered partially present due to Mr. Tellez having two male victims under age 13.

#### SID 2: Sexualized violence

This item refers to an intense interest in or preference for sexual activity that involves forcing sex upon an unwilling recipient. The coercive element must be the source of the sexual arousal and not merely a means to overcome resistance. This factor is considered absent.

#### SID 3: Sexual preoccupation

This factor is divided into two categories, rule based and concept based. Rule based sexual preoccupation refers to an intense interest in sex such that much of the individual’s behavior is sexually motivated. This factor is considered partially present for Mr. Tellez due to his daily use of pornography. Concept based sexual preoccupation refers to hypersexuality

<sup>15</sup> Mann, R.E., Hanson, R.K., & Thornton, D. (2010). Assessing risk for sexual recidivism: Some proposals on the nature of psychologically meaningful risk factors. *Sexual Abuse: A Journal of Research and Treatment* (22), 191-217.

<sup>16</sup> Allan, M., Grace, R.C., Rutherford, B., & Hudson, S.M. (2007). Psychometric assessment of dynamic risk factors for child molesters. *Sexual Abuse: A Journal of Research and Treatment* (19), 347-367.

<sup>17</sup> Craig, L.A., Thornton, D., Beech, A., & Browne, K.D. (2007). The relationship of statistical and psychological risk markers to sexual recidivism in child molesters. *Criminal Justice and Behavior* (34), 314-329.

<sup>18</sup> Thornton, D. & Knight, R.A. (2013). Construction and validation of SRA-FV need assessment *Sexual Abuse: A Journal of Research and Treatment*, Des 30, 2013, 1-16.

or sexual preoccupation that exceeds what would be normative for an adult. This factor was considered present based on Mr. Tellez's numerous arrests and convictions for sexual battery.

- Relational style domain (RSD)

RSD 1: Lack of emotionally intimate relationships with adults

This factor refers to the absence of emotionally intimate marital-type relationships. This factor is considered present as there was no evidence that Mr. Tellez had a relationship that lasted at least two years.

RSD 2: Emotional congruence with children

This factor refers to an individual who relates to children easier than adults or who prefers the company and companionship with children to that of adults. This factor is considered absent.

RSD 3: Callousness

This factor refers to a callous, lack of empathic connection with others, shallow affect, and behavior not regulated by feelings of guilt or by empathic distress at harm caused to others. This factor is considered partially present for Mr. Tellez based on his scores on the Psychopathy Checklist-Revised-Second Edition (see below).

RSD 4: Grievance thinking

This factor is divided into two separate items. Internal grievance thinking refers to an individual who easily feels wronged, suspicious, ruminates angrily, and tends to not see or accept others' points of view. This factor was considered absent. Poorly managed anger refers to a persistent pattern of verbal aggression, angry outbursts, threatening and intimidating behavior, or physical assaults of a nonsexual kind. This factor was considered absent.

- Self-management domain (SMD)

SMD 1: Lifestyle impulsivity

This factor refers to an impulsive irresponsible lifestyle, driven by sensation-seeking and poor tolerance of boredom, and lacking regulation by realistic long-term goals. This factor is partially present due to Mr. Tellez's scores on the Psychopathy Checklist-Revised-Second Edition (see below).

## SMD 2: Resistance to rules and supervision

This factor refers to a generalized and persistent oppositional reaction to rules, supervision, and other attempts at control by authority figures. This factor is partially present due to Mr. Tellez's scores on the Psychopathy Checklist-Revised-Second Edition (see below).

## SMD 3: Dysfunctional coping

This factor refers to poor cognitive problem-solving and/or poor affective regulation resulting in reckless behavior. This factor is considered present due to Mr. Tellez's difficulty functioning in and remaining in the community.

Mr. Tellez received a score on the Structured Risk Assessment: Forensic Version of 2.9. This placed Mr. Tellez at an "above average" level of psychological need.<sup>19</sup> (For the scoring of the SRA: FV, see the appendix at the end of this report).

### **Psychopathy Checklist-Revised (PCL-R), Second Edition:**

Mr. Tellez was administered the Psychopathy Checklist-Revised (PCL-R), Second Edition, which consists of a review of relevant collateral information and a focused clinical interview. The purpose of rating an individual on this scale is to determine an individual's overall level of psychopathy, which is a constellation of personality traits similar to Antisocial Personality Disorder, but more severe and encompassing. Research results appear to support that "the PCL-R as a potentially useful measure for clinical and forensic assessments addressing risk of sexual recidivism."<sup>20</sup> Overall, Mr. Tellez received a total score of 20 out of a possible 40 points, which placed Mr. Tellez at approximately the 39th percentile and in the average range for North American male offenders. indicates that psychopathy is a factor that suggests he is at a high risk to sexually reoffend.

### **Protective Risk Factors:**

There are, additionally, four factors that are considered protective. That is, they decrease the risk of further sexual offending. They are 1) Having been in the community without sexually re-offending for a significant period of time 2) Age and health issues 3) Having a very advanced age and 4) Having completed a comprehensive sex offender specific treatment program.

1) Having been in the community without sexually re-offending for a significant period of time:

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<sup>19</sup> Thornton, D. (2014). *Revised SRA- FV Level of Need Index for Use with 2015 Static-99R and Static-2002R Norms*. Unpublished manuscript.

<sup>20</sup> Hawes, S.W., Boccaccini, M.T. and Murrie, D.C., (2012). Psychopathy and the combination of psychopathy and sexual deviance as predictors of sexual recidivism: Meta-analytic findings using the Psychopathy Checklist-Revised, *Psychological Assessment*, 10.1037/a0030391.

Mr. Tellez has spent no time in the community following his most recent sexual offense. His risk is not reduced by this factor.

2) Age and health issues:

Research indicates that older offenders reoffend at lower rates than younger offenders.<sup>21</sup> Therefore, it is important to assess the impact of age, poor health, and limited mobility on a case by case basis and in the context of the individual's offense history. This factor was considered absent.

3) Having a very advanced age (over 70):

Mr. Tellez is 60 years old. His risk for sexual reoffense is not reduced by this factor.

4) Having completed a comprehensive sex offender specific treatment program.

Mr. Tellez has not received any sex offender specific treatment. His risk for sexual reoffense was not reduced by this factor.

**Protective Risk Factor Summary:**

In the opinion of this evaluator, Mr. Tellez's risk for sexual reoffense was not reduced by any of the protective risk factors examined.

**Discussion of Future Predatory Offending:**

In addition to formulating an opinion of whether or not Mr. Tellez is "likely" to sexually reoffend, it is also important to consider whether or not a sexual reoffense would be "predatory" per the definition of WIC 6600. Specifically, WIC 6600 defines predatory as an act that is directed towards a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization. Due to the lack of information previously cited regarding many of Mr. Tellez's sex offenses, critical information regarding his relationship to his victims in many of his offenses was missing. However, it is known that his relationship to his victims in the offenses that occurred in 1991, 2014, 2016 and 2017 was that of strangers. This is consistent with the notion that if Mr. Tellez does reoffend sexually, future sexual offenses are likely to be predatory in nature.

**Alternative Sex Offender Treatment Plans:**

When asked if he thought he needed any treatment for sexual offense behavior, he stated, "Yes." When asked where he would go for said treatment, he stated, "POC (referring to parole outpatient clinic, which typically does not include sex offense specific therapy.

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<sup>21</sup> Helmus, L., Thornton, D., Hanson, R.K. and Babchisin, K.M. (2012). Improving the Predictive Accuracy of Static-99 and Static-2002 with Older Sex Offenders: Revised Age Weights. *Sexual Abuse: A Journal of Research and Treatment* 24(1), 64-101.

Therefore, this evaluator concluded that he has no particular plans to pursue actual sex offender treatment in the community.

### **Criterion C Summary:**

In summary, Mr. Tellez received a score in the well above average risk category for risk of sexual reoffense on the Static-99R and the Static-2002R. Mr. Tellez's score on the Structured Risk Assessment: Forensic Version indicated that he is at an "above average" level of psychological need. Specifically, on the Static-99R, Mr. Tellez was similar to groups of offenders who recidivated at a rate of approximately 20 percent in five years. On the Static 2002R, Mr. Tellez was similar to groups of offenders who recidivated at a rate of approximately 34 percent in five years. The Psychopathy Checklist indicated that Mr. Tellez does not present an above average risk for sexual reoffense. Thus, in the opinion of this evaluator, Mr. Tellez represents a substantial danger- that is, a serious and well-founded risk of criminal sexual violence in the future (People v. Superior Court of Marin County, respondent Ghilotti, 2002). Thus, in the opinion of this evaluator, Mr. Tellez is likely to engage in sexually violent predatory criminal behavior as a result of his diagnosed mental disorder without appropriate treatment and custody.

### **III. CONCLUSION:**

Based on the above information, in my opinion, Mr. Tellez meets the criteria as a Sexually Violent Predator, as described in Section 6600 of the California Welfare and Institutions Code.

Respectfully submitted,



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Board Certified in Forensic Psychology,  
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**Static-99R Scoring Details:**

	Risk Factor	Yes = 1, No = 0	Scores
1	Age at Release? (Score range is -3 to 1)		-3
2	Ever lived with (no two year relationship)?		1
3	Index non-sexual violence, any conviction?		0
4	Prior non-sexual violence, any convictions?		1
5	Prior sex offenses? (Score range is 0-3)		3
6	Prior sentencing dates (excluding index)?		1
7	Convictions for non-contact sex offenses?		0
8	Any unrelated victims?		1
9	Any stranger victims?		1
10	Any male victims?		1
			TOTAL SCORE =
			6
			RISK CATEGORY=
			Well Above
			Average

**1. Age at release:**

Mr. Tellez's release date from his most recent sex offense conviction is listed as 9-10-19. His birthdate is 7-28-58. This results in an age at release of 61 and a corresponding score of "-3," as shown in the table from the Static-99R Coding Rules, listed below:

Ages	Score
Aged 18 to 34.9	1
Aged 35 to 39.9	0
Aged 40 to 59.9	-1
Aged 60 or older	-3

- 2. Ever lived with (No two-year relationship):** Mr. Tellez's relationship history. Includes no live-in relationship for at least two years. Based on the coding rules, he receives a score of "1" on this item.
- 3. Index non-sexual violence, any conviction:** A review of Mr. Tellez's criminal history reveals no separate conviction for non-sexual violence at the time of his index offense, resulting in a score of "0" on this item.
- 4. Prior non-sexual violence, any convictions:** A review of Mr. Tellez's criminal history reveals a separate conviction for a non-sexual violent offense- Corporal Injury to Spouse in 1997, resulting in a score of 1 on this item.
- 5. Prior sex offenses:** A review of Mr. Tellez's criminal history revealed 7 previous charges and 4 previous convictions, resulting in a score of "3" on this item.

<u>Charges</u>	<u>Convictions</u>	<u>Score</u>
0	0	0
1-2	1	1
3-5	2, 3	2
6+	4+	3

6. **Four or more prior sentencing dates (excluding index);** Mr. Tellez has numerous prior sentencing dates, resulting in a score of 1 this item.
7. **Any convictions for non-contact offenses:** Mr. Tellez has no prior convictions for non-contact offenses, resulting in a score of "0" on this item.
8. **Any unrelated victim:** Mr. Tellez's sex offense victim was not related to him, resulting in a score of 1 on this item.
9. **Any stranger victim:** None of Mr. Tellez's victims were strangers, resulting in a score of "1" on this item.
10. **Any male victim:** Mr. Tellez had three male victims of sexual offenses, resulting in a score of "1" on this item.

<b><u>STATIC 2002R CODING</u></b>		
<b><u>AGE</u></b>		
1. Age at Release 18 to 34.9 = 2 35 to 39.9 = 1 40 to 59.9 = 0 60 or older = -2		-2
<b><u>PERSISTENCE OF SEXUAL OFFENDING</u></b>		
2. Prior Sentencing Occasions for Sexual Offences: No prior sentencing dates for sexual offences = 0 1 = 1 2, 3 = 2 4 or more = 3	3	
3. Any Juvenile Arrest for a Sexual Offence and Convicted as an Adult for a Separate Sexual Offence: No arrest for a sexual offence prior to age 18 = 0 Arrest prior to age 18 and conviction after age 18 = 1	0	
4. Rate of Sexual Offending: Less than one sentencing occasion every 15 years = 0 One or more sentencing occasions every 15 years = 1	1	
Persistence Raw Score (subtotal of Sexual Offending) 0 = 0 1 = 1 2, 3 = 2 4, 5 = 3	4	
Persistence of Sexual Offending SUBSCORE		3
<b><u>DEVIANT SEXUAL INTERESTS</u></b>		
5. Any Sentencing Occasion For Non-contact Sex Offences: No = 0 Yes = 1	0	
6. Any Male Victim: No = 0 Yes = 1	1	
7. Young, Unrelated Victims: Does <u>not</u> have two or more victims < 12, one of them unrelated = 0 Does have two or more victims < 12 years, one must be unrelated = 1	1	
Deviant Sexual Interest SUBSCORE		2
<b><u>RELATIONSHIP TO VICTIMS</u></b>		
8. Any Unrelated Victim: No = 0 Yes = 1	1	
9. Any Stranger Victim: No = 0 Yes = 1	1	
Relationship to Victims SUBSCORE		2

<b>GENERAL CRIMINALITY</b>		
<b>10. Any Prior Involvement with the Criminal Justice System</b> No = 0 Yes = 1	1	
<b>11. Prior Sentencing Occasions For Anything:</b> 0-2 prior sentencing occasions for anything = 0 3-13 prior sentencing occasions = 1 14 or more prior sentencing occasions = 2	2	
<b>12. Any Community Supervision Violation:</b> No = 0 Yes = 1	1	
<b>13. Years Free Prior to Index Sex Offence:</b> <ul style="list-style-type: none"> <li>• More than 36 months free prior to committing the sexual offence that resulted in the index conviction AND more than 48 months free prior to index conviction = 0</li> <li>• Less than 36 months free prior to committing the sexual offence that resulted in the index conviction OR less than 48 months free prior to conviction for index sex offence = 1</li> </ul>	1	
<b>14. Any Prior Non-sexual Violence Sentencing Occasion:</b> No = 0 Yes = 1	1	
General Criminality raw score (subtotal General Criminality items) 0 = 0 1, 2 = 1 3, 4 = 2 5, 6 = 3	6	
General Criminality SUBSCORE		3
<b>TOTAL -2 to 13</b>		8

## **Static-2002R Scoring Details:**

### **1. Age at release:**

Mr. Tellez's release date from his most recent sex offense conviction is listed as 9-10-19. His birthdate is 7-28-58. This results in an age at release of 61 and a corresponding score of "-2," as shown in the table from the Static-2002R Coding Rules, listed below:

Ages	Score
Aged 18 to 34.9	2
Aged 35 to 39.9	1
Aged 40 to 59.9	0
Aged 60 or older	-2

### **2. Prior Sentencing Occasions for Sexual Offenses:**

Mr. Tellez has four sentencing occasions for a sexual offenses resulting in a score on this item of 3.

### **3. Any juvenile arrest for a sexual offense and convicted as an adult for a separate offense:**

Mr. Tellez has no juvenile arrest for a sexual offense., thus he receives a score of 0 on this item.

### **4. Rate of Sexual Offending:**

Mr. Tellez has five sentencing occasion for sexual offenses in 61 years, resulting in a score of 1 on this item.

### **5. Any sentencing occasion for non-contact sex offenses:**

Mr. Tellez has no sentencing occasions for a non-contact sex offenses, resulting in a score of 0 on this item.

### **6. Any male victims:**

Mr. Tellez has 3 male victims of a sexual offense, resulting in a score of 1 on this item.

### **7. Young, unrelated victims:**

Mr. Tellez has two victims under 12, resulting in a score of 1 on this item.

### **8. Any unrelated victim:**

Mr. Tellez's sex offense victims were not related to him, resulting in a score of 1 on this item.

**9. Any Stranger victim:**

Any stranger victim: Mr. Tellez has two stranger victims, resulting in a score of "1" on this item.

**10. Any prior involvement with the criminal justice system:**

Mr. Tellez had prior contacts with the criminal justice system, resulting in a score of 1 on this item.

**11. Prior Sentencing Occasions for anything:**

Mr. Tellez had numerous prior sentencing occasions, resulting in a score of 1 on this item.

**12. Any community supervision violation:**

Mr. Tellez has numerous prior community supervision violations, resulting in a score of 1 on this time.

**13. Years Free Prior to Index Sex Offense:**

Mr. Tellez has less than 36 months free prior to committing the sexual offense that resulted in the index conviction, resulting in a score of 1 on this item.

**14. Any Prior Non-Sexual Violence Sentencing Occasion:**

A review of Mr. Tellez's criminal history reveals a separate conviction for prior non-sexual violence, for Corporal Injury to Spouse in 1997, resulting in a score of 1 on this item.

## SRA-FV 1.55 Coding Form

Subject <i>Enter ratings and calculated scores solely in grayed areas</i>			Date	Examiner	
DOMAIN			FACTOR SCORES		DOMAIN SCORES
<b>Sexual Interests SID</b>					
Sexual Interest in Children SID1			1		
Sexualized Violence SID2			0		
Sexual Preoccupation SID3					
Rule-based		1			
Concept-based		2			
Rule + Concept =		3			
		3+ 2 =	1.5		
<b>Sexual Interests Domain TOTAL Score</b>			25	+ 3 =	.83
<b>Relational Style RSD</b>					
LEIRA – RSD1			2		
Emotional Congruence with Children RSD2			0		
Callousness RSD3 <i>PCL-R</i> facet 2 6 _1_ + 7 _1_ + 8 _1_ + 16 _1_ = 4/ 4* =			1		
Grievance Thinking RSD4					
Internal Grievance Thinking		0			
Poorly-Managed Anger		0			
IGT + PMA =		0			
		0+ 2 =	0		
<b>Relational Interests Domain TOTAL Score</b>			3	÷ 4 =	.75
<b>Self-Management SMD</b>					
Lifestyle Impulsivity SMD1: <i>PCL-R</i> 3 _1_ +9 _2_ +13 _2_ +14 _1_ +15 _2_ = 8 /5* =			1.6		
Resistance to Rules & Supervision SMD2: <i>PCL-R</i> 10 _0_ +12 _X_ +18 _0_ +19 _0_ +20 _2_ = 2 /4* =			.5		
Dysfunctional Coping SMD3			2		
<b>Self-Management Domain TOTAL Score</b>			4.1	+ 3 =	1.36
* minus omitted (X) items (0-6) =			<b>TOTAL NEED SCORE</b>		2.94

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
SAN DIEGO JUDICIAL DISTRICT  
330 West Broadway, San Diego, CA 92101**

THE PEOPLE OF THE STATE OF CALIFORNIA  
Petitioner,

vs.

VICTOR TELLEZ,

Respondent.

Case No. MH116049

D.A. No. MBO145

**PROOF OF SERVICE BY MAIL  
CCP S 1013A AND 2015.5**

I, the undersigned, declare as follows:

I am employed in the county of San Diego, over eighteen years of age and not a party to the within action. My business address is 330 West Broadway, San Diego, CA 92101.

On May 21, 2019, I served a copy of the within PETITION FOR INVOLUNTARY TREATMENT OF A SEXUALLY VIOLENT PREDATOR and ORDER TO PRODUCE RESPONDENT FOR ARRAIGNMENT PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 6600 et seq. to the interested parties in the within action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States Mail at 330 West Broadway, San Diego, CA 92101, addressed as follows:

**Courtney Cutter, Deputy Public Defender  
Public Defender's Office  
450 B Street, Suite 900  
San Diego, CA 92101**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on at 330 West Broadway, San Diego, CA 92101.

May 21, 2019  
Date

Norlice Smith  
Norlice Smith



## EXHIBIT G

1 SUMMER S. STEPHAN  
District Attorney  
2 MARTIN E. DOYLE, SBN 239162  
Deputy District Attorney  
3 Hall of Justice  
330 West Broadway, Suite 1240  
4 San Diego, California 92101  
(619) 515-8803  
5 Fax (619) 685-6540  
Email martin.doyle@sdcda.org

6 Attorneys for Petitioner

**FILED**  
Clerk of the Superior Court

JUN 26 2019

By: V. Agudo, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO  
10 CENTRAL DIVISION

11 THE PEOPLE OF THE STATE OF CALIFORNIA,  
12 Petitioner,

13 v.

14 VICTOR TELLEZ,  
15 (CDCR# BF2983)

16 Respondent.

No. MH 116049/SCE269196  
DA MBO145

**ORDER TO PRODUCE RESPON-  
DENT FOR ARRAIGNMENT  
PURSUANT TO WELFARE  
AND INSTITUTIONS CODE  
SECTION 6600 et seq.**

18 TO: WILLIAM D. GORE, SHERIFF OF THE COUNTY OF SAN DIEGO  
19 WARDEN, SAN QUENTIN STATE PRISON, SAN QUENTIN, CALIFORNIA:

20 It appearing to the court that a Petition for Involuntary Treatment of VICTOR  
21 TELLEZ has been duly filed by the District Attorney of the County of San Diego pursuant to  
22 Welfare and Institutions Code section 6600 et seq.;

23 IT IS HEREBY ORDERED that the Sheriff of the County of San Diego receive  
24 VICTOR TELLEZ from the Warden of San Quentin State Prison and transport and deliver  
25 said VICTOR TELLEZ to Department 102 of this court, at the County Courthouse, 1100  
26 Union Street, San Diego, California, on August 2, 2019, at 9:00 a.m., for arraignment on the  
27 petition and for such other proceedings as the court may then and there order.

28 /////

1 IT IS FURTHER ORDERED that the Warden of San Quentin State Prison  
2 release said VICTOR TELLEZ into the custody of the Sheriff of the County of San Diego in  
3 accordance with this order.

4 Dated: JUN 26 2019

5   
6 *Michael T. Smyth*

7 Judge of the Superior Court

8 MICHAEL T. SMYTH

9 The foregoing instrument is a full, true and correct  
10 copy of the original on file in this office.

11 Attest: \_\_\_\_\_



12 MICHAEL RODDY

13 Clerk of the Superior Court of the State of California,  
14 in and for the County of San Diego

15 By V. Agudo Deputy  
16  
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# EXHIBIT H

## eJIMS Inmate Detail

PERSONAL	Bk History	ARRESTS: 2, 1
<b>Last:</b> TELLEZ <b>First:</b> VICTOR <b>Middle:</b> RAUL <b>Sex:</b> M <b>DOB:</b> 07/28/1958 <b>Age:</b> 62 <b>Birth Place:</b> TIJUANA MM <b>SSN:</b> <b>RI System #:</b> <b>Gang Flag:</b> <a href="#">Y, More Info.</a> <b>Inmate Loc.:</b> IN - In <b>DNA Status:</b> Completed <b>Citizenship:</b> UNITED STATES <b>Foreign Notify:</b> N <b>Language:</b> ENGLISH <b>English Ability:</b> Fair <b>Race:</b> HISPANIC <b>Hair:</b> BLACK <b>Eyes:</b> BROWN <b>Height:</b> 5' 06" <b>Weight:</b> 195 lbs.	<p>Booking photos are not public records, and may not be released to the public or media except as authorized by Sheriff's policy. Booking photos are provided by the San Diego County Sheriff's Department to your agency through SDLaw with the expectation that they will remain confidential, and not be disclosed to anyone outside of your agency. Copies of booking photos may be available pursuant to subpoena.</p>  <p><b>JIM #:</b> <a href="#">400005445</a>  <b>Bk #:</b> 19747965  <b>Class:</b> 4 HIGH</p>	<b>Arr. Agency:</b> San Diego Sheriff Office <b>Arr. Location:</b> CIM PRISON <b>Officer:</b> SPALSBURY <b>Officer ID:</b> 0508 <b>Arr. Date:</b> 08/01/2019 <b>Agency Case #:</b> <b>Custody Days:</b> 548 <b>Booking Date:</b> 08/01/2019 <b>Booking Time:</b> 10:14:49 <b>Jail:</b> <a href="#">Vista Detention Facility</a>  <b>Area/HU/Cell:</b> M/ISO/01 <b>Holds:</b> YES <b>Arrest Type:</b> BOOKED-MENTAL HEALTH <b>Date Released:</b> <b>Release Type:</b> <b>Projected Release Date:</b> <b>Sentenced:</b> No <b>Not Eligible For Release</b> <b>HOLD-DETAINER</b>

## Remarks (1st Arr):

## CHARGES

Arr	Arrest Date	Chg	Section	Code	Description	Court Case	Bail Amount	Flag	Dispo. Type	Dispo. Date/Time	ROC	Notes
<u>2</u>	<u>08/01/2019</u>	1	HOLD		Rel Dt/Tm: Agency: SDSA		\$0.00					
<u>1</u>	<u>08/01/2019</u>	1	6600 WI	WI	SEXUAL PREDATOR	<u>MH116049</u>	\$0.00	N				FP

## COURT

Appearance	Destination Court	Date	Time	Arrest
1	SD011 (Central-Dept #101)	03/05/2021	08:15:00	1

1/29/2021 2:25:47 PM

# EXHIBIT I

MEGAN MARCOTTE, Chief Deputy  
Office of the Alternate Public Defender  
County of San Diego  
KRISTEN SANTERRE HADEN  
Deputy Alternate Public Defender  
State Bar No. 258439  
450 'B' Street, Suite 1200  
San Diego, California 92101  
Telephone: (619) 446-2900

Attorneys for Defendant  
VICTOR R. TELLEZ

**FILED**  
Clerk of the Superior Court

**MAR 02 2021**

By: L. Lacroix, Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

VICTOR R. TELLEZ,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE  
OF CALIFORNIA, COUNTY OF SAN  
DIEGO

Respondent.

THE PEOPLE OF THE STATE OF  
CALIFORNIA, BY AND THROUGH THE  
DISTRICT ATTORNEY FOR THE  
COUNTY OF SAN DIEGO,

Real Party in Interest.

~~HC 25013~~ EHC 1316  
Case No: CE369196 / MH116049

**PETITION FOR WRIT OF  
HABEAS CORPUS**

Date:  
Time:  
Dept:

**PETITION FOR WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY**

The Honorable Robert Amador  
Judge of the Superior Court, Eastern Division

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1  
2 **IN THE SUPERIOR COURT OF THE COUNTY OF SAN DIEGO**  
3 **CENTRAL DIVISION**  
4

5 VICTOR R. TELLEZ,

6 Petitioner,

7 v.

8  
9 THE SUPERIOR COURT OF THE STATE  
10 OF CALIFORNIA, COUNTY OF SAN  
11 DIEGO

12 Respondent.

13 THE PEOPLE OF THE STATE OF  
14 CALIFORNIA, BY AND THROUGH THE  
15 DISTRICT ATTORNEY FOR THE  
16 COUNTY OF SAN DIEGO,

17 Real Party in Interest.

Superior Court No.  
CE369196 / MH116049

**PETITION FOR WRIT OF  
HABEAS CORPUS**

18 **TO THE CLERK OF THE COURT AND THE DISTRICT ATTORNEY FOR THE**  
19 **COUNTY OF SAN DIEGO AND/OR**  
20 **HER DESIGNATED REPRESENTATIVE:**

21 Victor Tellez received ineffective assistance from his defense counsel in the trial court  
22 that deprived him the ability to enter a knowing, intelligent, and/or voluntary change of plea in  
23 his case. Defense counsel in the trial court failed to conduct any investigation, failed to present  
24 any mitigating information to the prosecution, and failed to advise Tellez of the consequences of  
25 his guilty plea prior to its entry. Because defense counsel failed to meet objective standards of  
26 reasonableness under prevailing professional norms, Tellez was unable to enter in to an  
27 intelligent or voluntary plea bargain. Therefore, Tellez was unconstitutionally incarcerated on  
28 his initial commitment. The government is now seeking to further commit Tellez as a sexually

1 violent predator pursuant to Welfare and Institutions Code section 6600 et. seq. based on this  
2 underlying unconstitutional conviction.

3 As a result of his counsel's failings, Tellez suffered prejudice because he was deprived of  
4 the opportunity to make a knowing and intelligent decision regarding a guilty plea in his case.  
5 Tellez was further stripped of the ability to make a voluntary decision whether to waive his  
6 constitutional rights, including his right to a jury trial. Were Tellez afforded a diligent,  
7 conscientious and effective advocate in the trial court, he would have proceeded to trial or  
8 negotiated a more favorable outcome to his case.

9 By this verified petition, Petitioner Tellez sets forth the following facts and causes for the  
10 issuance of the writ:

11 I.

12 The judgment of conviction and sentence under attack were entered in the Superior Court  
13 of San Diego County, East County Division, in San Diego, California.

14 II.

15 The date of judgment of conviction and sentence is December 20, 2017. The Superior  
16 Court case number is SCE369196.

17 III.

18 Petitioner's convictions were sustained as the result of a guilty plea entered on December  
19 11, 2017, upon the incompetent advice of defense counsel at the trial court. The case was not  
20 heard by a jury.

21 IV.

22 Petitioner was convicted of one count of lewd acts upon a child in violation of Penal Code  
23 section 288, subdivision (a). There were no enhancements charged.

24 V.

25 Petitioner was represented by counsel in the trial court: A Deputy Public Defender from  
26 the San Diego County Office of the Public Defender.  
27  
28

1 VI.

2 The prison sentence which Petitioner completed was three years, followed by a term of  
3 parole supervision that continues at the time of this filing.

4 VII.

5 Petitioner was released to Parole by the Department of Corrections and Rehabilitation on  
6 August 1, 2019, from the California Institution for Men in Chino, CA.

7 VIII.

8 On August 1, 2019, Petitioner was arrested, after his transfer from San Quentin State  
9 Prison, at the California Institution for Men by the San Diego County Sheriff's Department  
10 pursuant to an Order to Produce for Arraignment Pursuant to Welfare and Institutions Code  
11 section 6600 et seq. regarding involuntary treatment of a sexually violent predator.

12 IX.

13 Since August 1, 2019, Petitioner has been in the custody of the San Diego County Sheriff's  
14 Department at Vista Detention Facility in Vista, California under civil commitment proceedings  
15 pursuant to Welfare and Institutions Code section 6600 et seq. in Superior Court Case No.  
16 SCE369196 / MH116049. The proceedings are a result of Petitioner's conviction for violating  
17 Penal Code section 288, subdivision (a), lewd acts upon a child.

18 X.

19 Petitioner's imprisonment is illegal and in contravention of rights guaranteed by the Sixth  
20 Amendment to the United States Constitution and by Article I, Section 15 of the California  
21 Constitution, because Petitioner was denied the effective assistance of counsel in the trial court  
22 resulting in a plea that was entered without a knowing, intelligent, or voluntary waiver of  
23 constitutional rights. Petitioner was denied effective assistance of counsel in the following  
24 manner:

25 (a) Defense counsel continued Petitioner's case for several months to obtain a  
26 psychological evaluation which could have provided exculpatory evidence and opined as to  
27  
28

1 Petitioner's innocence to the principal charges. After months of continuances, defense counsel  
2 failed to review material, consult an expert psychologist, or obtain a report.

3 (b) Defense counsel failed to conduct any investigation into the allegations even though  
4 Petitioner informed his attorney that he was innocent of the charged offenses.

5 (c) Defense counsel failed to keep Petitioner reasonably informed of his case by  
6 communicating with Petitioner on only three (3) occasions on the days of Petitioner's court  
7 hearings.

8 (d) Defense counsel did not advise Petitioner of the possibility of involuntary treatment of  
9 sexually violent predator proceedings and involuntary lifetime confinement as a sexually violent  
10 predator. Failure to advise Petitioner of the more serious sanction of possible lifetime  
11 incarceration, analogous to potential immigration consequences, resulted in a fundamental  
12 deprivation of Petitioner's rights to enter a knowing, intelligent, and voluntary plea.

## 13 XII.

14 Reasonably effective counsel would have ensured that a psychological evaluation was  
15 obtained with sufficient time to defend and/or negotiate the case with that potentially exculpatory  
16 information. A psychological evaluation could have provided counsel with a defense to the  
17 specific intent element of the charged crimes and/or significant mitigation for negotiation  
18 purposes.

19 Reasonably effective counsel would have conducted investigation into the charged  
20 offenses.

21 Reasonably effective counsel would have met and communicated with client more than on  
22 the days of Petitioner's court hearings.

23 Reasonably effective counsel would have recognized that the possibility of indefinite  
24 confinement would serve as a severe potential sanction and taken this into consideration in his  
25 strategy. At a minimum, reasonably effective counsel would have ensured that defendant knew of  
26 the possibility of such a more serious consequence of his guilty plea.  
27  
28

XIII.

No tactical reason can justify the failures of defense counsel, as he should have advised defendant that SVP proceedings and/or commitment were possible. No tactical reason can justify failing to conduct any investigation into the allegations in this case. No tactical reason can justify continuing Petitioner's case for several months for the reason of obtaining a psychological evaluation only to fail to make efforts in obtaining one. No tactical reason can exist for failing to communicate with client more than (3) times in more than nine (9) months of representation.

In so failing, defense counsel performed below the objective standard of reasonable competence under prevailing professional norms. Defense counsel deprived Petitioner of effective assistance of counsel, resulting in a guilty plea that was not knowing, intelligent, or voluntarily entered.

IXX.

Petitioner has no other plain, speedy, or adequate remedy at law. The United States Supreme Court decided *Padilla v. Kentucky* (2010) 599 U.S. 356, which changed case precedent of *People v. Moore* (1998) 69 Cal.App.4th 626. The *Padilla* Court reasoned that immigration consequences are so inextricably linked with criminal proceedings that a defendant must be advised of immigration consequences prior to the entry of a guilty plea, and failure to advise must result in a withdrawal of a guilty plea. The California Supreme Court in *Moore* stated that SVP consequences are analogous to deportation proceedings. (*People v. Moore, supra*, 69 Cal.App.4th at p. 662.) It would naturally follow then that if a criminal defendant must be advised of potential immigration consequences, a criminal defendant must be also be advised of potential SVP consequences prior to the entry of a guilty plea. The potential of such a severe sanction as lifetime SVP commitment is as inextricably linked with criminal proceedings as immigration consequences. Thus, the remedy for such failure to advise must also then be withdrawal of the guilty plea.

1 XX.

2 Petitioner is unlawfully imprisoned on an unconstitutional underlying conviction and will  
3 be subjected to illegal confinement if he serves his entire term through the current period of parole  
4 and subsequent civil commitment. Accordingly, a Petition for Writ of Habeas Corpus is proper.  
5 (Pen. Code § 1473, subd. (a).)

6 XXI.

7 The following exhibits reflecting the aforementioned proceedings are attached to hereto  
8 and incorporated herein by reference:

9 Exhibit A: Complaint

10 Exhibit B: Case Activity Log

11 Exhibit C: Expense Authorization

12 Exhibit D: Change of Plea Form and Docket

13 Exhibit E: Change of Plea Transcript

14 Exhibit F: Petitioner's Declaration

15 Exhibit G: Sentencing Docket and Abstract of Judgment

16 Exhibit H: Petition for Involuntary Treatment of a Sexually Violent Predator, Filed May  
17 21, 2019

18 Exhibit I: Order to Produce

19 Exhibit J: Sheriff's Booking  
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner respectfully requests that this Court:

3 A. Issue a writ of habeas corpus or order to show cause to the Director of the Department  
4 of Corrections and the San Diego County Sheriff's Department to inquire into the legality of  
5 Petitioner's incarceration;

6 B. Vacate Petitioner's convictions in San Diego County Superior Court Case No.  
7 SCE369196 and set this matter for further proceedings;

8 C. Grant Petitioner such further relief as is appropriate in the interests of justice.

9  
10 Dated: 2/26/21

Respectfully submitted,

11  
12 MEGAN MARCOTTE, Chief Deputy  
Office of the Alternate Public Defender

13  
14   
15 KRISTEN SANTERRE HADEN  
16 Deputy Alternate Public Defender

17 Attorneys for the Petitioner  
18 VICTOR R. TELLEZ  
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I, Kristen Santerre Haden, declare the following:

I am an attorney duly licensed and admitted to practice before all courts of the State of California. I am a Deputy Alternate Public Defender for the County of San Diego assigned to represent the Petitioner, Victor Tellez, in Superior Court Case Number SCE369196.

Tellez is currently restrained of his liberty and confined by the San Diego County Sheriff's Department in Vista Detention Facility in San Diego, California. He is also currently on parole to the Department of Corrections and Rehabilitation. I am authorized to file this petition. Because Tellez is in custody and the facts upon which this petition is based are discernible only by reviewing voluminous court documents in San Diego County Superior Court, he is not in a position to verify this petition.

I have read the foregoing Petition for Writ of Habeas Corpus and all documents lodged in support thereof. I know the contents of the foregoing Petition for Writ of Habeas Corpus and declare that they are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26<sup>th</sup> day of February, 2021, at San Diego, California.

  
KRISTEN SANTERRE HADEN  
Deputy Alternate Public Defender

## INTRODUCTION

On March 25, 2017, Victor Tellez consumed approximately a pint of vodka and went to the mall. While there, he approached three boys, laid down behind them, and ran his hand across the backs of two of the boys, ages 9 and 10. The boys got up quickly and walked away. Tellez began walking in the same direction where he then approached a girl, 13, from behind, wrapped his arms around her, and pulled her closer. When she turned around and faced Tellez, he let go of her, walked away, and sat down elsewhere. At this point she found a security guard and informed them of the incident. Tellez was then arrested for a misdemeanor violation of Penal Code section 647.6, subdivision (a)(1), annoying or molesting a child.

Tellez was arraigned on March 29, 2017, upon a three-count complaint. (Exhibit A: Complaint.) The Complaint charged three separate felony counts of lewd acts in violation of Penal Code section 288, subdivision (a). There were no enhancements on any of the charges. Tellez's maximum exposure in the case was 12 years.

At arraignment, the Office of the San Diego County Public Defender was appointed to represent Tellez. The case was assigned to a Deputy Public Defender as defense counsel.

At arraignment, a readiness hearing was set for April 7, 2017, and a preliminary hearing was set for April 12, 2017. The readiness hearing was then delayed multiple times for defense counsel to obtain a psychological evaluation. (Exhibit B: Case Activity Log.) Defense counsel did not put in an interoffice expense request for a psychological evaluation until October 31, 2017, over seven months since his appointment. (Exhibit C: Expense Authorization.) A psychological evaluation was never conducted, and defense counsel did not conduct any investigation during his representation of Tellez. (See Exhibit B.)

On December 11, 2017, Mr. Tellez, without effective assistance, entered a change of plea to one count of lewd act upon a child in violation of Penal Code section 288, subdivision (a). (Exhibit B: Case Activity Log; Exhibit D: Change of Plea Form and Docket; Exhibit E: Change of Plea Transcript.) Tellez was not advised of the potential for involuntary SVP commitment because of his guilty plea. (Exhibit F: Petitioner's Declaration; Exhibit D: Change of Plea Form and Docket; Exhibit E: Change of Plea Transcript.) If Tellez had been advised of possible SVP

1 consequences, he would not have pled guilty. (Exhibit F: Petitioner's Declaration.)

2 Tellez only spoke to defense counsel three (3) times prior to his guilty plea, and each time  
3 was in the courthouse on the day of a court hearing. (Exhibit F: Petitioner's Declaration; Exhibit  
4 B: Case Activity Log.) Defense counsel never called or visited Tellez on any other occasion to  
5 discuss his case. (Ibid.)

6 Tellez was sentenced on the case by the Honorable Robert Amador on December 20, 2017,  
7 to three years in state prison. (Exhibit G: Sentencing Docket and Abstract of Judgment.)

8 On August 1, 2019, Tellez was released by the Department of Corrections and  
9 Rehabilitation and was immediately arrested by the San Diego County Sheriff's Department  
10 pursuant to an Order to Produce for Arraignment Pursuant to Welfare and Institutions Code  
11 section 6600 *et seq.* regarding the involuntary treatment of a sexually violent predator. (Exhibit  
12 H: Petition for Involuntary Treatment of a Sexually Violent Predator, Filed May 21, 2019; Exhibit  
13 I: Order to Produce.) Since then, Tellez has been in the physical custody of the San Diego County  
14 Sheriff's Department pending civil commitment proceedings under Welfare and Institutions Code  
15 section 6600 *et seq.* (Exhibit J: Sheriff's Booking.)

16 The Alternate Public Defender was appointed to represent Tellez in these proceedings after  
17 the Primary Public Defender declared a conflict on or around October 4, 2019.

### 18 POINTS AND AUTHORITIES

#### 19 **THIS HABEAS PETITION SHOULD BE GRANTED BECAUSE TELLEZ** 20 **RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL THAT RESULTED IN A** 21 **GUILTY PLEA DEPRIVING HIM OF HIS LIBERTY AND CONSTITUTIONAL** 22 **RIGHTS**

23 The California and United States Constitutions guarantee that persons deprived of their  
24 liberty have the right to petition for a writ of habeas corpus. (U.S. Const., art. I, § 9; Cal. Const.,  
25 art. I, § 11.) Any person unlawfully imprisoned or restrained of his liberty may prosecute a writ  
26 of habeas corpus to inquire into the cause of his imprisonment or restraint. (Cal. Pen. Code, §  
27 1473, subd. (a).) A petitioner seeking such habeas corpus relief bears the burden of establishing  
28 that the judgment under which he is restrained is invalid, establishing facts in support of relief by  
a preponderance of the evidence. (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1132, quoting *In re*

1 *Visciotti* (1996) 14 Cal.4th 325, 351.) In this petition, Tellez establishes that he is unlawfully  
2 restrained following a conviction that was sustained without the assistance of competent or  
3 effective defense counsel, resulting in prejudice and the deprivation of his liberty following a  
4 plea that was entered without adequate knowledge or intelligence about the facts and  
5 circumstances of his case.

6 **I. TELLEZ HAD A CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE**  
7 **OF COUNSEL AT ALL STAGES OF HIS PROCEEDINGS.**

8 In reviewing a petition for writ of habeas corpus, the court must ensure that defendants  
9 are incarcerated only after receiving competent representation of counsel. (*In re Vargas, supra*,  
10 83 Cal.App.4th at p. 1139, quoting *In re Jones* (1996) 13 Cal.4th 552, 566.) This is based on the  
11 criminal defendants' constitutional right to effective assistance of counsel, entitling the accused  
12 "to a reasonably competent attorney acting as a diligent, conscientious advocate." (*In re Jones*,  
13 *supra*, 83 Cal.App.4th at p. 566, quoting *People v. Pope* (1979) 23 Cal.3d 412, 424; *Strickland*  
14 *v. Washington* (1984) 466 U.S. 668.) This right to diligent and competent counsel naturally  
15 applies to the pleading and plea-bargaining stages of a criminal proceeding, because when a  
16 defendant enters a guilty plea they may only do so after a knowing and intelligent waiver of their  
17 constitutional rights. (*In re Alvernaz* (1992) 2 Cal.4th 924, 933; *Brady v. United States* (1970)  
18 397 U.S. 742, 748.) Such waiver can only be made with the assistance of competent counsel. (*In*  
19 *re Ibarra* (1983) 34 Cal.3d 277, 284.)

20 If a defendant contends that ineffective advice of counsel led to his guilty plea, the  
21 defendant first must establish ineffective assistance of counsel; that is, deficient performance by  
22 counsel that fell below the objective standard of reasonableness ensured by state and federal  
23 constitutions. (*People v. Mai* (2013) 57 Cal.4th 986, 1009; *In re Alvernaz, supra*, 2 Cal.4th at pp.  
24 936-37.) Second, the defendant must show prejudice, which is demonstrated when there is "a  
25 reasonable probability that, but for counsel's errors, [Defendant] would not have pleaded guilty  
26 and would have insisted on going to trial." (*Hill v. Lockhart*, (1985) 474 U.S. 52, 59; *In re*  
27 *Alvernaz, supra*, 2 Cal.4th at p. 934; *In re Vargas, supra*, 83 Cal.App.4th at p. 1140; *People v.*  
28 *Maguire*, (1998) 67 Cal.App.4th 1022, 1032.) When defense counsel's performance is ineffective  
and prejudicial, resulting in an involuntary and unintelligent guilty plea, the defendant has  
received constitutionally defective assistance that demands a reversal of his conviction.

1 (*Strickland v. Washington, supra*, 466 U.S. at p. 687; *In re Alvernaz, supra*, 2 Cal.4th at p. 934;  
2 *People v. Maguire, supra*, 67 Cal.App.4th at p. 1028.)

3 Moreover, a defendant entering a guilty plea must make knowing and voluntary waivers  
4 of his constitutional trial rights, intelligently understanding the nature of the charge(s) against  
5 him and the consequences of entering into a plea agreement; otherwise the plea is invalid and  
6 unconstitutional. This is known as the *Boykin-Tahl* requirement, and a violation of the  
7 requirement renders the plea unconstitutional and demands a remedy of withdrawal – regardless  
8 of a showing of prejudicial impact. (*Boykin v. Alabama*, (1969) 395 U.S. 238; *In re Tahl* (1969)  
9 1 Cal.3d 122.)

10 Tellez received ineffective assistance of counsel at the trial court level that fell below the  
11 standard performance required of defense counsel. As a result of counsel's deficient performance,  
12 Tellez was deprived of the opportunity and knowledge of a meritorious defense to the primary  
13 charges of his case, and he was never made aware of the possibility of the severe SVP sanction.  
14 This precluded Tellez's ability to enter a knowing or intelligent change of plea in his case, in  
15 violation of *Boykin-Tahl*. If Tellez were assisted by competent counsel, he would not have  
16 accepted the proffered plea bargain and would have obtained a more favorable resolution in his  
17 case by going to trial based on competent and effective defense investigation, negotiation, and  
18 counsel. Instead, Tellez was left completely unaware that a guilty plea could result in indefinite  
19 commitment, and he was sentenced to state prison without a true or fair understanding of the  
20 legal case and charges against him whatsoever.

21 **II. TELLEZ RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN**  
22 **DEFENSE COUNSEL FAILED TO INVESTIGATE, PRESENT MITIGATING**  
23 **INFORMATION, AND PROPERLY ADVISE BEFORE ADMISSION OF THE**  
24 **PLEA.**

25 Although the decision to plead guilty is ultimately made by the defendant, it is his  
26 counsel—not the defendant—who is particularly qualified to make an informed evaluation of the  
27 proffered plea bargain. (*People v. Maguire, supra*, 67 Cal.App.4th at p. 1028; *People v.*  
28 *Stanworth* (1974) 11 Cal. 3d 588, 611.) It is thus expected that a criminal defendant relies on his  
counsel's independent evaluation of the charges, applicable law, evidence, and risks and probable  
outcome of trial. (*People v. Maguire, supra*, 67 Cal.App.4th at p. 1028.) In order to provide their  
client with this independent evaluation, defense counsel has an obligation to investigate all

1 defenses, explore the factual bases for defenses, review the applicable law as to each charge and  
2 allegation, be acquainted with the contents of the case file, and accurately advise the client of all  
3 aspects of the case. (*Ibid.*; *In re Vargas, supra*, 83 Cal.App.4th at p. 1139.) If a viable defense  
4 emerges from counsel's research and investigation, counsel must then take appropriate steps to  
5 challenge the legal sufficiency of those counts for which the defense applies, keeping the  
6 defendant apprised of those facts all the while. (*People v. Maguire, supra*, at p. 1030.)

7 In this case, defense counsel did not conduct any investigation and failed to obtain a  
8 potentially exculpatory psychological evaluation after defense counsel noted that one was  
9 necessary. (Exhibit B: Activity Log.) Specifically, Penal Code section 288, subdivision (a), is a  
10 crime which requires a specific intent. A psychologist could have opined that Tellez did not  
11 commit the crime with the requisite intent as he was severely intoxicated at the time of the offense  
12 and/or has an underlying mental health condition that casted a reasonable doubt that he possessed  
13 the requisite intent at the time of the offense. Even if the psychological evaluation would not  
14 have amounted to a defense, it would likely have assisted counsel in mitigating the case at the  
15 plea-bargaining stages. As a result of these failures, defense counsel never uncovered a viable  
16 defense through basic investigation and expert evaluation. Failing to even attempt to uncover any  
17 defense over the nearly nine months of representation, counsel was unable to take the appropriate  
18 steps to challenge the counts for which the defense applied or apprise Tellez of relevant facts  
19 relating to that defense. This rendered defense counsel wholly ineffective in assisting Tellez in  
20 the plea-bargaining stage of his case.

21 Not only did defense counsel fail in investigating the case, but he failed in basic  
22 communication with Tellez. Defense counsel met with Tellez a total of three (3) times. Each of  
23 these three (3) times were in the courthouse on the days that Tellez was to appear for a hearing.  
24 At no other time did defense counsel speak with Tellez about his case, even over the phone, in  
25 over nine months. Meeting with incarcerated clients on the day of court hearings often occurs in  
26 a rushed manner and in areas that are not completely private. Discussing sensitive cases, such as  
27 the charges Tellez faced, only in these settings is wholly insufficient for meaningful  
28 communication. Communicating with a criminal defendant solely in this manner falls drastically  
below the standard of practice. Tellez was, thus, not afforded effective counsel.

1       **A. Defense Counsel Failed to Conduct Any Investigation or Obtain a Psychological**  
2       **Evaluation.**

3       It is well settled that counsel for the criminal defendant must investigate potential  
4 defenses. (*People v. Ibarra, supra*, 60 Cal.2d at p. 464; *People v. Stanworth, supra*, 11 Cal.3d at  
5 p. 611.) Such investigation satisfies the fundamental standards of criminal defense, as the  
6 American Bar Association admonishes: "Defense counsel should conduct a prompt investigation  
7 of the circumstances of the case and explore all avenues leading to facts relevant to the merits of  
8 the case and the penalty in the event of conviction." (ABA Stds. for Crim. Justice, Defense  
9 Function (3d ed. 1993) 4-4.1(a).)<sup>1</sup> This duty to investigate "requires that counsel gather as much  
10 information as possible about the case, including facts concerning the acts charged, possible  
11 defenses, and the accused's background and prior record." (*Barber v. Municipal Court* (1979) 24  
12 Cal. 3d 742, 751.) In fact, "[a] reasonable investigation into the facts of a case must be made  
13 before rational and informed decisions can be made about strategies, tactics, *and acceptance of*  
14 *plea bargains.*" (*In re Vargas, supra*, 83 Cal.App.4th at p. 1138, italics added; see also ABA  
15 Stds. for Crim. Justice, *supra*, 4-6.1(b) "Under no circumstances should defense counsel  
16 recommend to a defendant acceptance of a plea unless appropriate investigation and study of the  
17 case has been completed.")

18       *In re Vargas*, (2000) 83 Cal.App.4th 1125, presents a poignant example of defense counsel  
19 failing to conduct adequate pre-plea investigation, with habeas relief resulting. (*In re Vargas*,  
20 *supra*, 83 Cal.App.4th 1125.) In *Vargas*, the defendant pleaded to three counts of forcible lewd  
21 acts upon a child and was sentenced to twenty-four years in prison. (*Id.* at p. 1130.) The defendant  
22 filed a habeas petition arguing that his counsel provided ineffective assistance and coerced him  
23 into accepting the plea without adequately preparing the case. (*Ibid.*) The Court of Appeal agreed  
24 and made the following observations from the record: family and friends of the defendant had  
25 agreed to testify on the defendant's behalf, but they were never contacted by defense counsel;  
26 one witness gave a recorded interview that provided "information ...relevant on the issue of

27       <sup>1</sup> This edition of ABA Standards were in effect at the time of Tellez's case in 1999. Courts have long referred to the  
28 American Bar Association Standards for Criminal Justice as guides to determining what is reasonable in defending a criminal  
case. (*Rompilla v. Beard, supra*, 545 U.S. at p. 387, quoting *Wiggins v. Smith* (2003) 539 U.S. 510, 524; *Strickland v.*  
*Washington, supra*, 466 U.S. at p. 688; *In re Alvernaz, supra*, 2 Cal.4th at p. 937.)

1 guilt,” but was told she was not needed in court; the tape of that exculpatory witness’ interview  
2 was “conveniently missing” from defense counsel’s file, and; no additional investigation was  
3 conducted. (*Id.* at p. 1137.) The Court of Appeal found “a lack of credible evidence to establish  
4 that [defense counsel] conducted an adequate investigation,” and remanded the case to the trial  
5 court to determine “whether [defense counsel] conducted an investigation, and whether any  
6 investigation was sufficient or perfunctory.” (*Id.* at p. 1138.) The Court of Appeal could not  
7 conclude with confidence that the defendant in *Vargas* entered his plea voluntarily or with the  
8 aid of competent counsel and accordingly granted the habeas petition. (*Id.* at p. 1144.) Thus the  
9 obligation to investigate generally—and investigate defenses specifically—is a fundamental  
10 obligation bearing greatly on the determination of whether a criminal defendant has received the  
11 level of representation to which he is constitutionally entitled.

12 Tellez’s defense counsel failed in this most fundamental regard. Defense counsel did not  
13 submit even a single investigative inquiry in his nearly nine months of representing Tellez. As in  
14 *Vargas*, defense counsel’s file in the instant case reveals no credible evidence that any, let alone  
15 adequate, investigation was ever conducted. (*In re Vargas, supra*, 83 Cal.App.4th at p. 1138.)  
16 Additionally, defense counsel never obtained the necessary psychological evaluation that was the  
17 basis for several continuances without any identifiable strategic excuse for the failure. (Exhibit  
18 B: Activity Log.)

19 **B. Defense Counsel Failed to Advise Tellez of the Possibility of the Severe Sanction of**  
20 **Involuntary Treatment.**

21 It is well established that for a guilty plea to be valid, the accused must understand the  
22 nature of the charge(s) against him and the consequences of a guilty plea and, knowingly,  
23 intelligently and voluntarily waive his constitutional rights. (*Boykin v. Alabama, supra*, 395 U.S.  
24 238; *In re Tahl, supra*, 1 Cal.3d 122.) In *Bunnell v. Superior Court* (1975) 13 Cal.3d 592, the  
25 Supreme Court of California held that “[i]n all guilty plea and submission cases the defendant  
26 shall be advised of the direct consequences of conviction.” (at P. 605.) A ‘direct’ consequence is  
27 one that has “a definite, immediate, and largely automatic effect on the range of the defendant’s  
28 punishment.” (*Torrey v. Estelle* (9th Cir.1988) 842 F.2d 234, 236.) Alternatively, a defendant need  
not be advised of ‘collateral’ consequences which are those that do not “inexorably follow” from



1 a conviction of the offense involved in the plea. (*People v. Crosby* (1992) 3 Cal.App.4th 1352,  
2 1355.)

3 The categorization of consequences between 'direct' and 'collateral' has long been  
4 debated. Historically, the possibility of commitment was a consequence that the defendant had to  
5 be made aware of. In giving examples of direct consequences the court in *Bunnell* listed, "the  
6 permissible range of punishment provided by statute, registration requirements, if any ..., and, in  
7 appropriate cases the possibility of commitment pursuant to Welfare and Institutions Code,  
8 sections 3050, 3051, or 6302." (*Bunnell v. Superior Court, supra*, 13 Cal.3d at p. 605.) Welfare  
9 and Institutions Code sections 3050 and 3051 related to the commitment of narcotics addicts  
10 (Repealed by Stats.2012, c. 41 (S.B.1021), § 119, operative Jan. 1, 2015.) Welfare and  
11 Institutions Code section 6302 related to judicial commitments of mentally disordered sex  
12 offenders and was the predecessor to section 6600. (Repealed by Stats.1981, c. 928, p. 3485, § 2,  
13 operative January 1, 1982.) Following similar reasoning, the court in *People v. Lomboy* (1981)  
14 116 Cal.App.3d 67, held that a defendant who pleads not guilty by reason of insanity must be  
15 advised to the maximum possible length of commitment. "We hold advisement of the disparity in  
16 the lengths of possible custodial consequences is essential to ensure a defendant knows the true  
17 potential of such a plea even though she may be generally aware 'some' institutionalization is  
18 possible." (*Id.* at p. 69.) The court looked at collateral consequences as two categories: "those  
19 which are noncustodial and nonpenal in nature and those which are custodial in nature but which  
20 may be imposed only after future volitional misconduct on the part of a defendant." (*Id.* at p. 72.)  
21 Because there the defendant was "subject to possible confinement in a mental institution for the  
22 rest of her natural life for causes over which she has no control, to wit: her mental condition" the  
23 court allowed Lomboy to withdraw her plea. Commitment, whether for insanity or SVP, is a  
24 custodial consequence, based on a mental condition, and is a significant factor in whether a  
25 defendant decides to plead guilty or not.

26 In 1998, Thomas Moore was convicted of committing a lewd act on a child under the age  
27 of 14. He sought to withdraw this plea on the grounds that the trial court had not advised him that  
28 he might be subject to additional confinement under the Sexually Violent Predator act. (*People v.*  
*Moore, supra*, 69 Cal.App.4th 626.) The court in Moore's case reasoned that there are a number  
of steps, after an initial screening, that must be taken before one can be committed pursuant to

1 section 6600 and it is therefore not “‘immediate’ or ‘inexorable.’” (*Id.* at p. 632.) The Court further  
2 went on and compared SVP consequences to immigration consequences stating that, “SVP Act  
3 proceedings are more analogous to deportation than the commitment proceedings Moore cites  
4 because an SVP commitment, like deportation, depends on additional findings by a different  
5 tribunal after the defendant has been sentenced.” (*People v. Moore, supra*, 69 Cal.App.4th at p.  
6 662.) The court therefore held that an advisal as to the possibility of SVP commitment is not  
7 necessary because, “[a]ny such determination would require additional steps and would depend  
8 on additional findings which would not be controlled by Moore’s plea and admissions herein.”  
(*Id.* at p. 632.)

9 The comparisons made in the *Moore* decision, however, were altered by the 2010 decision  
10 by the United States Supreme Court in the case of *Padilla v. Kentucky*. (*Padilla v. Kentucky* (2010)  
11 599 U.S. 356.) This decision recognized that deportation proceedings themselves, regardless of  
12 the result, are a direct result of a criminal conviction. The Court in *Padilla* found that the  
13 possibility of deportation is a consequence to which a defendant must be advised about before a  
14 change of plea. (*Id.*) The Court stated, “this Court has never distinguished between direct and  
15 collateral consequences in defining the scope of constitutionally ‘reasonable professional  
16 assistance’ required under *Strickland*.” (*Id.* at p. 356-357; citing *Strickland v. Washington* (1984)  
17 466 U.S. 668, 689.) The Court added that, “[a]lthough removal proceedings are civil, deportation  
18 is intimately related to the criminal process, which makes it uniquely difficult to classify as either  
19 a direct or a collateral consequence.” (*Id.* at P. 357.) The United States Supreme Court found that  
20 where deportation is clear, a defendant must be advised of that. Despite the need for additional  
21 findings, the Supreme Court additionally found that even the possibility of deportation is a  
22 significant consequence and something that a defendant must be advised of before a change of  
23 plea.

24 The United States Supreme Court recently extended the *Padilla* ruling in *Lee v. United*  
25 *States*, (2017) 137 S.Ct. 1958, where the defendant was a lawful permanent resident and was  
26 charged with a drug offense. Lee told his retained attorney several times that he was not a citizen,  
27 and he repeatedly asked if he would be deported if he entered a guilty plea. The attorney told Lee  
28 that he would not be deported if he pleaded guilty. Based on that assurance, Lee pleaded guilty  
only to find out that he pleaded guilty to an offense that resulted in his mandatory deportation.

1 (Lee, *supra*, 137 S.Ct. at pp. 1962-63.) In reversing Lee's conviction, the United States Supreme  
2 Court commented:

3 [I]n this case counsel's 'deficient performance arguably led not to a  
4 judicial proceeding of disputed reliability, but rather to the forfeiture  
5 of a proceeding itself.' [Citation.] When a defendant alleges his  
6 counsel's deficient performance led him to accept a guilty plea rather  
7 than go to trial, we do not ask whether, had he gone to trial, the result  
8 of that trial 'would have been different' than the result of the plea  
9 bargain. That is because, while we ordinarily 'apply a strong  
10 presumption of reliability to judicial proceedings,' 'we cannot accord'  
11 any such presumption 'to judicial proceedings that never took place.'  
12 [Citation.] (Lee, *supra*, 137 S.Ct., at p. 1965.)

13 The California Supreme Court has yet to reconcile *Padilla* and its progeny to SVP  
14 commitments. Recently, however, in *People v. Patterson*, (2017) 2 Cal.5th 885, the Supreme  
15 Court of California held that advisement that a criminal conviction "may" have adverse  
16 immigration consequences does not bar a noncitizen defendant from seeking to withdraw a guilty  
17 plea on that basis. In so doing the court stated, "[t]he court might consider that justice would not  
18 be promoted if an accused, willing to accept a misdemeanor conviction and probationary status,  
19 cannot by timely action revoke his election when he thereafter discovers that much more serious  
20 sanctions, whether criminal or civil, direct or consequential, may be imposed." (*Id.* at p. 894.)

21 Civil commitment based on SVP law is an extremely "serious sanction" as it incapacitates  
22 an individual for an indefinite amount of time. Further, the *Moore* Court likened SVP  
23 consequences to immigration consequences by directly stating as much. (See *Moore, supra*, 69  
24 Cal.App.4th at p. 662.) SVP proceedings are just as inextricably linked to criminal convictions  
25 as deportation proceedings. If a defendant can withdraw a guilty plea on the basis of a "more  
26 serious sanction" like immigration consequences, it would stand to reason that a defendant facing  
27 the possibility of a lifetime SVP commitment must be advised of that possibility for him to enter  
28 a knowing guilty plea. The remedy for such failure to advise is withdrawal of the guilty plea.

1 **III. TELLEZ SUFFERED PREJUDICE AS A RESULT OF DEFENSE COUNSEL'S**  
2 **INEFFECTIVE ASSISTANCE.**

3 In addition to establishing that defense counsel did not meet the threshold standards of  
4 competency, Tellez must establish that defense counsel's incompetence resulted in prejudice to  
5 his case. (*In re Alvernaz, supra*, 2 Cal.4th at p. 936.) The Supreme Court has held that prejudice  
6 is established when there is "a reasonable probability that, but for counsel's unprofessional errors,  
7 the result of the proceeding would have been different." (*Strickland v. Washington, supra*, 466  
8 U.S. at p. 669.) In the context of plea deals, prejudice exists when there is "a reasonable  
9 probability that, but for counsel's errors, [Defendant] would not have pleaded guilty and would  
10 have insisted on going to trial." (*Hill v. Lockhart, supra*, 474 U.S. at p. 59; *In re Alvernaz, supra*,  
11 2 Cal.4th at p. 934; *In re Vargas, supra*, 83 Cal.App.4th at p. 1140; *People v. Maguire, supra*, 67  
12 Cal.App.4th at p. 1032.) As stated in *Lee, supra*, the likelihood of prevailing at said trial is not  
relevant to these findings. (*Lee, supra*, 137 S.Ct. 1965.)

13 Tellez would have proceeded to trial had defense counsel been effective at the trial court  
14 level. Tellez would not have entered a guilty plea had he been advised of possible SVP  
15 consequences. (Exhibit F: Petitioner's Declaration.) Having obtained ineffective assistance in the  
16 plea-bargaining stages of the case that fell below the standard of prevailing professional norms,  
17 Tellez suffered prejudice of a constitutional magnitude that warrants withdrawal of his guilty plea  
and a reversal of his conviction.

18 ///

19 ///

20 ///

1  
2 CONCLUSION

3 Tellez's defense counsel was ineffective, because counsel neither diligently nor  
4 competently advocated for the protection of his constitutional rights. Defense counsel was  
5 ineffective because he failed to investigate, failed to obtain a psychological evaluation, failed to  
6 communicate, and failed to advise Tellez of the particularly severe penalty of possible SVP  
7 commitment enmeshed with criminal convictions prior to entry of his guilty plea. As a result,  
8 Tellez was pushed through his criminal proceedings entirely unable to make a voluntary, knowing,  
9 or intelligent decision regarding a plea of guilty. Were Tellez afforded effective counsel, he would  
10 have proceeded to trial or advanced plea negotiations to a more favorable resolution of the case.  
11 Deprived of such assistance, Tellez was prejudiced by the involuntary and unknowing outcome  
12 of his plea bargain, which was entered in violation of his Sixth Amendment rights. Accordingly,  
13 Tellez asks this Court to vacate his convictions and set further hearings so that the case may  
14 proceed with effective counsel.

15 Dated: 2/26/21

16 Respectfully submitted,

17 MEGAN MARCOTTE, Chief Deputy  
18 Office of the Alternate Public Defender

19   
20 KRISTEN SANTERRE HADEN  
21 Deputy Alternate Public Defender

22 Attorneys for the Petitioner  
23 VICTOR TELLEZ  
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## EXHIBIT J

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**FILED**  
San Diego Superior Court

JUN 17 2021

Clerk of the Superior Court  
By: N. Abella

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

IN THE MATTER OF THE APPLICATION OF:	Habeas Case No.: EHC 1316 Sup. Ct. Nos: SCE369196 & MH116049
VICTOR RAUL TELLEZ,	<b>RETURN TO PETITION FOR WRIT OF HABEAS CORPUS; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RETURN</b>
Petitioner,	
For Petition for Writ of Habeas Corpus.	

**INTRODUCTION**

Petitioner asks this court to set aside his four year old guilty plea for which he has already been sentenced and served his time in case SCE369196, because his attorney at the time of his plea allegedly failed to advise him of a collateral consequence of that plea. Due to a number of factors, including the underlying conviction, he is presently the Respondent in a separate civil proceeding to commit him for treatment in the state hospital under the Sexually Violent Predator Act ("SVPA"), MH116049. This court has issued an Order to Show Cause ("OSC") directed to Respondent (here, the People) as to why Petitioner should not have his previous guilty plea withdrawn based on ineffective assistance of his previous criminal attorney's alleged failure to advise him of the potential for future SVPA proceedings.



1       The answer is simple. Petitioner here has failed to establish either element of ineffective  
2 assistance of counsel in the plea advisal. It is his burden to show both that (1) counsel's  
3 performance fell below an existing standard of reasonableness; and (2) that but for counsel's  
4 errors, the result would have been more favorable to the defendant (i.e. given all of the  
5 circumstances present at the time of the plea, he would have rejected the offer). Though it is his  
6 burden to establish both to collaterally attack a final judgment of conviction; here, he has done  
7 neither.

8       Under long existing California law, the failure of a criminal attorney to advise a client  
9 that he or she may in the future be subject to commitment for treatment under the SVPA is a  
10 collateral consequence of that plea. Counsel does not fall below an objective standard of  
11 reasonableness if he or she fails to advise the client of collateral—as opposed to direct—  
12 consequences of the plea. The California Court of Appeal has on at least two occasions deemed  
13 potential SVPA commitment collateral and thus not subject to attack on habeas for failure to  
14 advise. No court has found otherwise. This state of affairs has not been changed by the United  
15 States Supreme Court's decision in *Padilla v. Kentucky*. The High Court expressly refused to  
16 decide whether or not immigration consequences were collateral or direct. They only set  
17 immigration aside due to the "unique nature of deportation" for which there are limited duties to  
18 advise the client that a plea may carry adverse consequences. No California court has found any  
19 other failure to advise of non-direct consequence of a guilty plea to be below objective standards  
20 of reasonableness. And since the Court of Appeal has found to the contrary, Petitioner's claim  
21 fails the first prong of an ineffective assistance claim and must be denied.

22       It also fails the second prong. Petitioner would have accepted a three-year minimum  
23 sentence on one count of Penal Code section 288, subdivision (a) in exchange for the dismissal  
24 of the other two counts and the likelihood of an aggravated sentence of 12 years, despite a  
25 speculative SVPA commitment in the future. Very few inmates about to be paroled with SVPA  
26 qualifying convictions are ever referred for involuntary treatment. An SVPA commitment  
27 depends on a number of elements in addition to the qualifying offense that are unknown or  
28 unknowable to counsel or the client at the time of the change of plea. Those elements largely

1 revolve around the Respondent of an SVPA petition's mental state at the time that the petition is  
2 filed. The filing of the petition often is many years removed from the guilty plea, because of the  
3 changeable nature of mental illness. Case law is also clear that corroboration above and beyond  
4 a self-serving declaration by Petitioner that he would not have accepted the guilty plea is  
5 required to carry petitioner's burden. Here, that is all petitioner has presented. Accordingly, he  
6 cannot meet his burden to establish that he would not have taken a very generous guilty plea in  
7 light of his overall exposure and likelihood of conviction, based on a possible, but unlikely  
8 future collateral consequence that was dependent on other elements apart from the plea itself.

9 Accordingly, this court should deny the petition in its entirety.

#### 10 **ADMISSIONS, DENIALS AND ALLEGATIONS**

11 Comes now the People of the State of California, through their counsel, Summer Stephan,  
12 San Diego County District Attorney, and Martin Doyle, Deputy District Attorney, and allege as  
13 follows:

##### 14 **I.**

15 The People admit that the Petitioner was convicted of a "sexually violent offense" within  
16 the meaning of Welfare & Institutions Code section 6600, subdivision (a)(1), in the Superior  
17 Court for San Diego County, East County Division.

##### 18 **II.**

19 The People admit that Petitioner was sentenced to the low term of three years in state  
20 prison in San Diego Superior Court case SCE369196 on December 20, 2017 for his qualifying  
21 sexually violent offense (Exhibit G, Abstract of Judgment).

##### 22 **III.**

23 The People admit that Petitioner pled guilty to committing a lewd act on a child, a  
24 sexually violent offense on December 11, 2017 (Exhibit D, Change of Plea Form).  
25 Consequently, the People admit there was no jury trial. The People adamantly deny that trial  
26 counsel's advice to plead guilty and accept the low term of 3 years in state prison was in any  
27 manner incompetent. Petitioner faced three counts of committing the same act on two children  
28 and the possibility of up to 12 years in state prison if convicted of the charges on that complaint,

1 without the possible allegations that could have been added subjecting him to a life sentence  
2 (Exhibit A, Criminal Complaint, case SCE369196). Had Petitioner contested the charges, the  
3 fact-finder likely would have received the opportunity to consider Petitioner's lengthy history of  
4 committing similar offenses, pursuant to Evidence Code section 1108. (See Exhibit B, Defense  
5 Counsel's Notes; Exhibit H, Reports of Drs. Shoko Kokubun & Preston Sims.)

6 IV.

7 Respondent admits that in exchange for his guilty plea to only one count of Penal Code  
8 section 288, subdivision (a), the remaining two counts were dismissed (Exhibit E, Change of  
9 Plea Transcript). The People admit that no enhancements were alleged on the complaint at the  
10 time petitioner pled guilty.

11 V.

12 Respondent admits that Petitioner was represented at the time of his guilty plea by David  
13 Thompson, a Deputy Public Defender with the San Diego County Office of the Primary Public  
14 Defender (Exhibit E, Change of Plea Transcript).

15 VI.

16 Respondent admits that Petitioner completed his three-year prison sentence and that his  
17 parole has not expired.

18 VII.

19 Respondent admits Petitioner was released from the physical custody of the state prison.  
20 On June 26, 2019, the Honorable Judge Michael Smyth entered an order to produce Petitioner  
21 before this court prior to his release on parole pursuant to Welfare & Institutions Code section  
22 6600, et seq. (Pen. Code, § 1480, subd. (3); Exhibit I, Order to Produce.) Petitioner was received  
23 by the San Diego County Sheriff on August 1, 2019 for hearings on the petition filed by the  
24 People on May 21, 2019 to commit him to the State Hospital as a Sexually Violent Predator  
25 (Exhibit J, San Diego Sheriff Custody Status of Petitioner).

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VIII.

Respondent admits that Petitioner was transferred from the custody of the California Department of Corrections and Rehabilitation to the custody of the San Diego County Sheriff on or about August 1, 2019 pursuant to Judge Smyth's June 26, 2019 order (Pen. Code, § 1480, subd. (2)).

IX.

Respondent admits that petitioner has remained in the custody of the County Sheriff contesting the petition to commit him to the State Hospital for treatment (Pen. Code, § 1480, subds. (1) & (4)). Petitioner has statutory rights that he has continuously waived to have that petition adjudicated in a timely manner. Respondent denies that the petition in MH116049 is predicated solely on his conviction for his "sexually violent offense" in SCE269196.

While a conviction for a "sexually violent offense" is a necessary predicate for the filing of a petition under Welfare and Institutions Code sections 6600, et seq., it is not sufficient. Both of the independent clinical evaluators assigned to screen a paroling inmate convicted of a sexually violent offense prior to his or her release must concur that the inmate presently meets the definition of a "sexually violent predator" before the District Attorney may file a petition. Both independent evaluators selected by the Department of State Hospitals in this case agreed that petitioner is a person "convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent behavior." In California, of all the inmates who are referred for screening prior to parole, this conclusion is reached in only a small fraction of cases.<sup>1</sup>

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<sup>1</sup> Respondent filed a Public Records Act request for the exact figures on May 25, 2021. The reason for the first extension request was that we were waiting for the response. We are still awaiting the response from the Department of State Hospitals and will forward it to the court upon receipt as an exhibit to this return.

1 X.

2 Respondent denies that Petitioner's detention pending treatment for his mental disorder in  
3 case MH116049 is in any way inconsistent with either the Sixth Amendment to the United  
4 States Constitution or Article I, section 15 of the California Constitution.

5 Respondent denies that Petitioner received ineffective assistance of counsel in case  
6 SCE369196. Petitioner waived his constitutional rights in the change of plea form attached to  
7 his petition and in open court, on the record, when questioned by the trial judge, as reflected in  
8 the transcript also attached to his petition (Exhibits D & E).

9 Respondent denies each allegation of ineffective assistance of counsel alleged in the  
10 petition. However, with respect to the Order to Show Cause, the People deny that defense  
11 counsel's failure to advise petitioner of the possibility he may be treated under the sexually  
12 violent predator law—if such a failure to advise occurred—constitutes ineffective assistance of  
13 counsel. Long established precedent holds that the future potentiality of being committed for  
14 treatment under the SVPA is a collateral consequence of a plea to a qualifying offense. The  
15 collateral nature of the consequence, the low likelihood of commitment, and the unknown and  
16 unknowable future mental state of one's client does not make a failure to advise a representation  
17 that falls below an "objective standard of reasonableness." Further, Respondent denies that  
18 there is any reasonable probability that but for the failure to advise of the speculative collateral  
19 consequence of future mental health treatment, Petitioner would not have otherwise accepted the  
20 very generous plea bargain in light of his overall exposure and the likelihood of his conviction.  
21 Petitioner's plea was knowing, intelligent, and voluntary just as the judge taking it so found.

22 XI.

23 Respondent denies that any failure to advise Petitioner of the possibility of future  
24 compulsory mental health treatment—if such a failure occurred—fell below an objective  
25 standard of reasonableness in light of its collateral nature to the plea. Further, respondent denies  
26 that Petitioner would not have otherwise accepted such a plea in light of its generous sentencing  
27 length, his overall exposure, and the likelihood of his conviction.

28 ///

1 XII.

2 Possible future SVPA commitment predicated, in part, by a guilty plea is and always has  
3 been a collateral consequence of a such a plea. Since it is a collateral consequence of the plea, it  
4 cannot serve to render the plea unknowing, unintelligent, or involuntary. No counsel can be  
5 expected to advise their client of every possible future consequence that may flow from  
6 accepting or rejecting a plea. Such a task would be impossible. The courts have drawn a line  
7 between those consequences that are “direct” and those that are “collateral.” Respondent denies  
8 that failing to advise a client of a collateral consequence of a plea—if it occurred in this case—  
9 results in representation that falls below an objective standard of reasonableness.

10 Petitioner repeatedly omits the second prong of an ineffective assistance of counsel claim  
11 in his allegations. That is telling. Respondent alleges that Petitioner would never have turned  
12 down such a generous plea bargain and gone to trial under such dire circumstances based on a  
13 speculative consequence down the road that rested on his future mental health.

14 XIII.

15 Respondent again denies that any failure to advise of a potential SVPA commitment—if  
16 it occurred—constituted representation that fell below and objective standard of reasonableness.  
17 Respondent further alleges that any deficient performance, if it existed, would render  
18 Petitioner’s decision to accept the generous plea offer unknowing, unintelligent or involuntary.

19 XIV.

20 This court is bound by the decisions of the Court of Appeal in *People v. Ibanez* (1999) 76  
21 Cal.App.4th 537, 546 and *People v. Moore* (1998) 69 Cal.App.4th 626, 630 holding that  
22 potential future commitment for treatment as a Sexually Violent Predator is a collateral  
23 consequence of a plea of guilty. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d  
24 450.)

25 The United States Supreme Court in *Padilla v. Kentucky* (2010) 599 U.S. 356 recognized  
26 immigration consequences as “unique.” It did not change the “collateral” verses “direct”  
27 distinctions for purposes of guilty plea advisal’s. Nor did it render the entirety of collateral  
28 consequences of a guilty plea suddenly direct ones of which every defendant must be advised.

1 And in any event, the Supreme Court said as much in *Chaidez*. And it further held that *Padilla* is  
2 not retroactive. (*Chaidez v. United States* (2013) 568 U.S. 342.) Respondent denies that these  
3 immigration cases in any way change this court's duty to follow the clearly established  
4 precedent of a court of superior jurisdiction with respect to the duty to advise of the potential  
5 future collateral consequence of commitment for sexual violent predator treatment when taking  
6 a plea of guilty in a criminal case.

7 **XV.**

8 Respondent denies that petitioner is unlawfully imprisoned on an unconstitutional prior  
9 conviction. Petitioner is being detained pending resolution of the *petition* as to whether or not he  
10 should be sent to the State Hospital to receive treatment for his diagnosed mental disorder that  
11 presently makes him a danger to the health and safety of others in that it is likely that he will  
12 engage in sexually violent criminal behavior.

13 **XVI.**

14 Respondent incorporates by reference, all exhibits filed in support of the petition for a  
15 writ of habeas corpus filed by Petitioner, all facts stated in respondent's memorandum of points  
16 and authorities, and respondent's exhibits. For ease and consistency, Respondent will use the  
17 same exhibit numbers and pagination, except as to the additional exhibit which will later be  
18 attached to this return, which Respondent will refer to as "Exhibit 1."

19 **PRAYER**

20 For the preceding reasons, Respondent respectfully prays that:

- 21 1. The instant Petition for Writ of Habeas Corpus be denied in its entirety and  
22 proceedings under the Sexually Violent Predator Act proceed;

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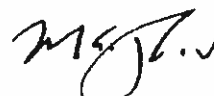
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1 2. Alternatively, if the underlying plea agreement be set aside and the parties returned to  
2 pre-plea agreement status quo, Respondent be permitted to allege and prove petitioner's  
3 violation of three, rather than one count, of Penal Code section 288, subdivision (a); and  
4 3. The court grant all other necessary relief.  
5

6 Dated: June 17, 2021

Respectfully submitted,

7 SUMMER STEPHAN  
8 District Attorney

9   
10 MARTIN E. DOYLE  
11 Deputy District Attorney  
12 Attorneys for the People and Respondent  
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1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                   **RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

3                   **STATEMENT OF THE CASES**

4                   **SCE369196**

5                   On March 29, 2017, the San Diego County District Attorney filed a three count complaint  
6 alleging that Petitioner committed lewd and lascivious acts against three children (Joel T., age 9,  
7 Alfredo S., age 11, and Zakyra W., age 13 ) on March 25, 2017, within the meaning of Penal  
8 Code section 288, subdivision (a). On December 11, 2017, represented by Deputy Public  
9 Defender David Thompson, Petitioner pled guilty to count 3, in exchange for the dismissal of  
10 counts 1 & 2, and a stipulated low term, 3 year prison sentence. On December 20, 2017,  
11 Petitioner was sentenced to 3 years in state prison in accordance with the agreement made at the  
12 time he pled guilty.

13                  **MH116049**

14                  Prior to Petitioner's release from his three year state prison term, he was screened by the  
15 Department of Corrections and Rehabilitation as potentially meeting Sexually Violent Predator  
16 criteria and referred to the Department of State Hospitals for a full evaluation, pursuant to  
17 Welfare & Institutions Code section 6601. Two independent psychologists performed a full  
18 evaluation of Petitioner as to whether he met the three criteria to be designated a Sexually  
19 Violent Predator. Both independent evaluators separately concurred that he did. After they  
20 reached these conclusions, on May 6, 2019, the Deputy Director of the Department of State  
21 Hospitals forwarded her recommendation to the San Diego District Attorney that she file a civil  
22 commitment petition under Welfare & Institutions Code section 6600, et.seq.

23                  On May 21, 2019, the San Diego County District Attorney filed a petition for the  
24 involuntary treatment of Petitioner (who was the Respondent as to that petition) as a sexually  
25 violent predator. On June 26, 2019, Judge Michael Smyth issued an order directing the warden  
26 of San Quentin State Prison to release Petitioner to the custody of the San Diego Sheriff for  
27 proceedings on the petition. On August 2, 2019, Petitioner was brought before the San Diego  
28 Superior Court for proceedings on the petition. Petitioner has repeatedly waived time and the

1 court has consistently found "good cause" for the continuance of the probable cause hearing on  
2 the petition up to now. (Welf. & Inst. Code, § 6602, subd. (b.)) A status hearing to set the  
3 probable cause hearing on the petition is presently set for July 29, 2021.

4 **STATEMENT OF FACTS**  
5 **REGARDING PETITIONER'S GUILTY PLEA IN CASE SCE369196**

6 On December 11, 2017, petitioner appeared before Judge Daniel Lamborn, represented  
7 by Deputy Public Defender David Thompson. Petitioner filled out a four page change of plea  
8 form indicating he desired to plead guilty to count 3 of the complaint (Exhibit D). On page 2 of  
9 the form, Petitioner initialed item 7f which stated: "My attorney has explained to me that other  
10 possible consequences of this plea may be:" Nineteen potential consequences were listed. Seven  
11 of those consequences were circled. While item 14 "Sexually Violent Predator Law," was listed,  
12 it was not amongst the seven that were circled. Petitioner, Mr. Thompson, the prosecutor, and  
13 Judge Daniel Lamborn all signed the change of plea form on page 3. Mr. Thompson signed  
14 acknowledging: "I discussed all charges and possible defenses with the defendant, and the  
15 consequences of this plea, including any immigration consequences... I concur in the  
16 defendant's plea and waiver of constitutional rights."

17 At the change of plea hearing, Judge Lamborn went over the form with petitioner  
18 (Exhibit E). The court obtained a waiver of Petitioner's *Boykin-Tahl*<sup>2</sup> rights. The court explained  
19 and gained the defendant's acknowledgement of the maximum punishment (3 years), maximum  
20 fine (\$20,000), and maximum parole period (4 years) under the terms of the plea agreement. As  
21 a factual basis, Petitioner admitted that he "willfully and lewdfully committed a lewd and  
22 lascivious act upon the body part, the back, of Zakyra, Z-A-K-Y-R-A, a child under 14 years of  
23 age with the intent of arousing [his] sexual desires." The defendant pled guilty in open court to  
24 count 3, Penal Code section 288, subdivision (a). Mr. Thompson joined in the plea and the court  
25 accepted it, finding that it was made in "a knowing, intelligent and voluntary fashion." There  
26 was no discussion about the sexually violent predator law.

27 \_\_\_\_\_  
28 <sup>2</sup> *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (the right to a jury trial, right to cross-examine witnesses, and right to remain silent).

1 On December 20, 2017, Petitioner was sentenced consistently with the plea agreement to  
2 three years in state prison (Exhibit G).

### 3 ARGUMENT

#### 4 I.

#### 5 PETITIONER CANNOT MEET HIS BURDEN TO COLLATERALLY ATTACK 6 HIS FINAL JUDGMENT OF CONVICTION

7 A final judgment of conviction is presumed valid. (*In re Clark* (1993) 5 Cal.4th 750,  
8 764.) “For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness  
9 of the conviction and sentence; defendant must undertake the burden of overturning them.  
10 Society’s interest in the finality of criminal proceedings so demands, and due process is not  
11 thereby offended” (*People v. Duvall* (1995) 9 Cal.4th 464, 474, quoting *People v. Gonzales*  
12 (1990) 51 Cal.3d 1179, 1260.)<sup>3</sup>

13 Here, Petitioner cannot meet his burden to establish a claim of ineffective assistance of  
14 counsel in the taking of his 2017 plea to one count of lewd and lascivious acts on a child less  
15 than 14 years of age. As the petition states, assessing the effectiveness of counsel at a plea-  
16 bargain is a two-pronged inquiry (Petition, at p. 14; *Hill v. Lockhart* (1985) 474 U.S. 52). “[T]he  
17 two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective  
18 assistance of counsel. In the context of guilty pleas, the first half of the *Strickland v.*  
19 *Washington* test is nothing more than a restatement of the standard of attorney competence  
20 already set forth in *Tollett v. Henderson, supra*, and *McMann v. Richardson, supra*. The second,  
21 or “prejudice,” requirement, on the other hand, focuses on whether counsel’s constitutionally  
22 ineffective performance affected the outcome of the plea process. In other words, in order to  
23 satisfy the “prejudice” requirement, the defendant must show that there is a reasonable  
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25 <sup>3</sup> But see, *Strickland v. Washington* (1984) 466 U.S. 668, 697-698: “An ineffectiveness  
26 claim, however, as our articulation of the standards that govern decision of such claims makes  
27 clear, is an attack on the fundamental fairness of the proceeding whose result is challenged.  
28 Since fundamental fairness is the central concern of the writ of habeas corpus [internal citation  
omitted] no special standards ought to apply to ineffectiveness claims made in habeas  
proceedings.”

1 probability that, but for counsel's errors, he would not have pleaded guilty and would have  
2 insisted on going to trial." (*Id.*, at pp. 58-59). "[T]he concern that unfair procedures may have  
3 resulted in the conviction of an innocent defendant is only rarely raised by a petition to set aside  
4 a guilty plea." (*United States v. Timmreck* (1979) 441 U.S. 780, 784.) If either prong is not met,  
5 the petition must be denied. (*Hill, supra*, 474 U.S. at p. 60.) As will be shown, neither prong has  
6 been met here.

## 7 II.

### 8 ANY FAILURE TO ADVISE PETITIONER OF A COLLATERAL CONSEQUENCE OF 9 HIS PLEA OF GUILTY DOES NOT FALL BELOW AN OBJECTIVE STANDARD OF 10 REASONABLE REPRESENTATION

11 Turning to the first prong, the failure to advise a criminal defendant of a potential  
12 collateral consequence of his or her guilty plea does not fall "below an objective standard of  
13 reasonableness." (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) "[A]n attorney's failure  
14 to inform his or her client of the collateral consequences of the client's plea does not constitute  
15 incompetent representation under the *Strickland* criteria." (*People v. Reed* (1998) 62  
16 Cal.App.4th 593, 597.) And, as Petitioner acknowledges, potential future sexually violent  
17 predator commitment made possible—in part—by a conviction for a "sexually violent offense,"  
18 has been deemed by the Court of Appeal to be a collateral consequence of a guilty plea to such  
19 an offense. (Petition, at pp. 19-20; *People v. Ibanez* (1999) 76 Cal.App.4th 537, 546 and *People*  
20 *v. Moore* (1998) 69 Cal.App.4th 626, 630.) This court is bound by those decisions. (*Auto Equity*  
21 *Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456.)<sup>4</sup>

22 This is where the petition and the return part ways. Petitioner urges this court to disregard

23  
24 <sup>4</sup> Even if a court of superior jurisdiction were to find that *Padilla* somehow changed the  
25 underlying reasoning of *Ibanez* and *Moore* such that an SVPA advisal is now required when  
26 taking a plea to a "sexually violent offense," it would not undermine this Petitioner's final  
27 judgment of conviction. The Supreme Court has held its holding in *Padilla* was "a new rule"  
28 under *Teague v. Lane* (1989) 568 U.S. 342, not retroactive to final judgments of conviction  
decided before it announced the new rule in *Padilla*. (*Chaidez v. United States* (2013) 568 U.S.  
342, 347.) If a California court were to announce a "new rule" that "imposes a new obligation  
on the government" with respect to an SVPA advisal, it would offer Petitioner here no relief.

1 the opinions of a court of superior jurisdiction by finding the United States Supreme Court's  
2 subsequent decision in *Padilla v. Kentucky* (2010) 599 U.S. 356, "altered" the "comparisons"  
3 made in *Moore* and *Ibanez* such as to undermine their reasoning and somehow free this court  
4 from being bound by them (Petition, at p. 20). The petition further suggests that the Supreme  
5 Court did away with any distinctions between "direct" and "collateral" consequences in the  
6 taking of pleas and making of advisals (*Id.*).

7 But that cannot be the case. Were the courts to apply such a "butterfly effect" standard no  
8 guilty plea would withstand collateral attack. A felony conviction has the potential to trigger any  
9 number of unforeseen or unlikely consequences. And the Supreme Court in *Padilla* did not say  
10 whether or not the "direct" or "collateral" distinction was of consequence to the "reasonable  
11 professional assistance" under *Strickland*. "Whether that distinction is appropriate is a question  
12 we need not consider in this case because of the *unique nature of deportation*." (*Padilla, supra*  
13 599 U.S. at p. 365, emphasis added.) California courts on the other hand, have made that  
14 distinction.<sup>5</sup> In the absence of controlling United States Supreme Court authority to the contrary,  
15 this court must follow the distinction made by them in assessing the "collateral consequences"  
16 category as it pertains to the "reasonable professional assistance" prong of *Strickland*. (*People v.*  
17 *Crosby* (1992) 3 Cal.App.4th 1352, 1355 (*Crosby*).)

18 A collateral consequence is one which does not "inexorably follow" from a conviction of  
19 the offense involved in the plea. (*Crosby, supra*, 3 Cal.App.4th at p. 1355.) Though this court is  
20 not free to re-examine whether or not commitment as a sexually violent predator "inexorably  
21 follows," conviction of a sexually violent offense, it is clear that it does not. A small percentage  
22 of all paroling inmates screened for sexually violent predator commitment are referred by the  
23 Department of State Hospitals for commitment (Exhibit 1). In addition to being convicted of a  
24 sexually violent offense, they must also: 1) have a diagnosed mental disorder; that 2) makes  
25 them a danger to the health and safety of others because it is likely that they will engage in  
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27 <sup>5</sup> As has almost every other court in the country. The Supreme Court later noted that "the  
28 exclusion of advice about collateral consequences from the Sixth Amendment's scope [is] one  
of the most widely recognized rules of American law." (*Chaidez, supra*, 568 U.S. at p. 351.)

1 sexually violent predatory criminal behavior.<sup>6</sup> (Welf. & Inst. Code, § 6600, subd. (a)(1);  
2 CALCRIM No. 3454.) In the rare event that two independent mental health evaluators come  
3 unanimously to that conclusion, the Department of State Hospitals makes a Sexually Violent  
4 Predator commitment recommendation. (Welf. & Inst. Code, § 6601, subd. (f).) Only then can  
5 the county of the inmate's conviction petition the court to have the person committed for  
6 treatment as an SVP. (Welf. & Inst. Code, § 6601(h) & (i); *People v. Superior Court (Troyer)*  
7 (2015) 240 Cal.App.4th 654, 664.) The People must then prove to a judge at a probable cause  
8 hearing that the person meets the SVP criteria (Welf. & Inst. Code, § 6602). If a judge finds  
9 probable cause, it is then required that the county prove that the person meets the criteria of the  
10 SVPA beyond a reasonable doubt to a unanimous jury before they can be committed for  
11 treatment (Welf. & Inst. Code, § 6603; CALCRIM No. 3454). In other words, far enough  
12 removed from the mere felony conviction itself to "inexorably follow" it. Accordingly, if Mr.  
13 Thompson failed to advise Petitioner that his plea constituted one element of a potential future  
14 SVPA commitment he was not operating "below an objective standard of reasonableness."

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21 <sup>6</sup> And there is no way for counsel at the time of the *plea* to know what his or her client's  
22 mental state will be at the time of the *evaluation*. (See, *People v. Munoz* (2005) 129 Cal.App.4th  
23 421, 431 ["The prior finding has no res judicata effect with regard to the issues of the  
24 defendant's mental condition or dangerousness since . . . it dealt with a different issue, i.e.,  
25 whether the defendant then had a currently diagnosed mental disorder rendering him  
26 dangerous."]; *Turner v. Superior Court* (2003) 105 Cal.App.4th 1046, 1058-1059 ["an  
27 adjudication of status or mental health issues is not conclusive as to the same status on a later  
28 date"]; *People v. Carmony* (2002) 99 Cal.App.4th 317, 323 ["collateral estoppel does not apply  
in light of the changeable nature of a person's mental health and dangerousness, and the  
[Sexually Violent Predators Act]'s emphasis on his or her current, continuing threat to  
society"].) Inmates are screened six months before their release (Welf. & Inst. Code, § 6601,  
subd. (a)(1)) which might be many years in the future from the change of plea.

1 III.

2 PETITIONER CANNOT MEET HIS BURDEN TO SHOW THAT BUT FOR  
3 THE FAILURE TO ADVISE OF A POTENTIAL FUTURE SVPA COMMITMENT, HE  
4 WOULD HAVE TURNED DOWN A VERY GENEROUS PLEA OFFER AND GONE  
5 TO TRIAL

6 The petition should also be denied because it fails the second, or prejudice prong of the  
7 ineffectiveness claim. It is Petitioner's burden to prove by a preponderance of the evidence that  
8 he would not have accepted the very generous plea bargain and instead proceeded to trial had his  
9 attorney advised him of unlikely possibility that he could have been committed for treatment  
10 under the SVPA on some future date. (*Hill v. Lockheart, supra*, 47 U.S. at pp. 58-59; *In re*  
11 *Resendiz* (2001) 25 Cal.4th 230, 254.) The sole piece of evidence Petitioner offers is a  
12 declaration by himself to that effect (Petition, p. 22; Exhibit F). However, prejudice must be  
13 corroborated by *independent* evidence. (*Id.*, at p. 253 (emphasis added).) "[P]etitioner's  
14 assertion he would not have pled guilty if given competent advice 'must be corroborated  
15 independently by objective evidence.'" (*Id.*, citing *In re Alvarnez* (1992) 2 Cal.4th 924, 938.)  
16 This, he has not done. Since it is his burden to do so, the petition must be denied. (*Resendiz*,  
*supra*, 25 Cal.4th at p. 254.)

17 But assuming for the sake of argument that Petitioner's self-serving declaration alone  
18 could constitute evidence sufficient to carry his burden of establishing prejudice, the court  
19 should turn to the entirety of the record before it in determining whether or not Petitioner has  
20 carried his burden to establish that he would have rejected Respondent's offer and proceeded to  
21 trial based on the possibility that he could receive treatment as a sexually violent predator at  
22 some point in the future, based on his mental state at that time. "In determining whether a  
23 defendant, with effective assistance, would have accepted [or rejected a plea] offer, pertinent  
24 factors to be considered include: whether counsel actually and accurately communicated the  
25 offer to the defendant; the advice, if any, given by counsel; the disparity between the terms of  
26 the proposed plea bargain and the probable consequences of proceeding to trial, as viewed at the  
27 time of the offer; and whether the defendant indicated he or she was amenable to negotiating a  
28 plea bargain." (*In re Alvernaz supra*, 2 Cal.4th at p. 938.)

1 Here, petitioner faced 12 years in state prison for committing lewd and lascivious acts  
2 against 3 separate children under the age of 14 on the complaint that was filed at the time of his  
3 plea. (Exhibit A, Criminal Complaint, SCE369196.<sup>7</sup>) However, had the prosecution added the  
4 allegation under Penal Code section 667.61, subdivision (e)(4)<sup>8</sup> against Petitioner that there was  
5 more than one victim in the present case, Petitioner would have faced an indeterminate sentence  
6 of 15 years to life (Penal Code section 667.61, subdivision (b)). Here, the People's offer was one  
7 count rather than three, for the presumptive minimum sentence of 3 years. (See, Pen. Code §  
8 1203.066, subd. (d).) Petitioner does not allege, and the change of plea forms and transcripts  
9 bear out, that Petitioner was well-advised of the 3-year minimum sentence he would receive in  
10 exchange for his plea to one count rather than three.

11 Further, from the record available to this court, there appears a strong likelihood of  
12 conviction should Petitioner have proceeded to trial. As the psychological evaluation attached to  
13 the Respondent's Petition to Commit Petitioner for treatment demonstrate, Petitioner<sup>9</sup> had a  
14 lengthy prior history of prior sexual offenses. (See, Exhibit H, Reports of Drs. Shoko Kokubun  
15 & Preston Sims.) Petitioner would have been faced at trial with the testimony of three separate  
16 children—all strangers to him—accusing him of touching them in a lewd & lascivious manner.  
17 This testimony, coupled with prior act propensity testimony pursuant to Evidence Code section  
18 1108, makes the outcome of a trial unlikely to be a favorable one for Petitioner. A reviewing  
19 "court also may consider the probable outcome of any trial, to the extent it may be discerned."  
20 (*Resendiz, supra*, 25 Cal.4th at p. 254.)

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21  
22 <sup>7</sup> Each count of Penal Code section 288, subdivision (a) carried a sentencing triad of 3, 6,  
23 or 8 years. Unlike some sex crimes, absent other allegations, Penal Code section 288,  
24 subdivision (a) by itself does not result in the removal of the one-third the mid-term consecutive  
25 subordinate term limitation under Penal Code section 11701.

26 <sup>8</sup> See, Penal Code section 667.61, subdivision (c)(8) which includes Penal Code section  
27 288, subdivision (a).

28 <sup>9</sup> He is the Respondent in the separate proceedings to commit him for treatment as a  
Sexually Violent Predator.



1 And of course, Petitioner's lengthy prior history of sexual offenses would not just be used  
2 by Respondent as propensity evidence to prove his guilt in the charged offenses. The prior  
3 history would also be used to aggravate his sentence in the event of a conviction. (Cal. Rules of  
4 Court, rules 4.421 and 4.425.)

5 In the face of all this, examining the "entire record, petitioner fails ultimately to persuade  
6 [ ] that it is reasonably probable he would have forgone the distinctly favorable outcome he  
7 obtained by pleading, and instead insisted on proceeding to trial, had trial counsel [advised him]  
8 about [a potential future SVP commitment] consequences of pleading guilty." (*Resendiz, supra*,  
9 25 Cal.4th at p. 254.) Since Petitioner has failed to establish the prejudice prong, in addition to  
10 his failure to establish representation below an objective standard of reasonableness, his petition  
11 should be denied.

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1 **CONCLUSION**

2 For the preceding reasons, Respondent respectfully requests this court deny the Petition  
3 for Writ of Habeas Corpus. Alternatively, for the sake of argument, if the court grants the  
4 petition, which Respondent argues it should not, Respondent respectfully requests the 2017 plea  
5 agreement be set aside, the parties returned to their respective status quo positions prior to the  
6 plea agreement, that all the charges previously filed against Petitioner be reinstated, and the  
7 People be allowed to allege and prove petitioner's violation of three counts of Penal Code  
8 section 288, subdivision (a).

9  
10 Dated: June 17, 2021

Respectfully Submitted,

11 SUMMER STEPHAN  
12 District Attorney

13 

14 MARTIN E. DOYLE  
15 Deputy District Attorney

16 Attorneys for the People and Respondent  
17  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

<b>IN THE MATTER OF THE APPLICATION OF:</b>  <b>VICTOR RAUL TELLEZ</b>  <div style="text-align:right">Petitioner.</div>	<div style="text-align:center">For Court Use Only</div> <div style="text-align:center"><b>FILED</b> <small>San Diego Superior Court</small></div> <div style="text-align:center"><b>JUN 17 2021</b></div> <div style="text-align:center">Clerk of the Superior Court By: <b>N. Abella</b></div>
For a Petition for a Writ of Habeas Corpus.	Trial Court Case Nos. SCE369196; MH116049 Habeas Corpus Case No. EHC1316

**PROOF OF SERVICE BY MAIL**


I, Suzanne Young-O'Rear, declare as follows:

I am employed in the County of San Diego, over eighteen years of age and not a party to the within action. My business address is 250 E. Main St., 5<sup>th</sup> floor, El Cajon.

On June 17, 2021, I served a copy of the within **APPLICATION FOR EXTENSION OF TIME TO FILE RETURN TO THE PETITION FOR WRIT OF HABEAS CORPUS, AND DECLARATION IN SUPPORT THEREOF** to the interested parties in the within action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States Mail, addressed as follows:

Office of the Alternate Public Defender  
Attn: Kate Tesch  
450 B Street, Suite 1200  
San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 17, 2021 at 250 E. Main St., El Cajon, CA 92020 West Broadway, San Diego, CA 92101.



## EXHIBIT K

MEGAN MARCOTTE, Chief Deputy  
Office of the Alternate Public Defender  
County of San Diego  
VICKIE FERNANDES  
State Bar No. 239752  
Deputy Public Defender  
451 "A" Street, Suite 1200  
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Telephone: (619) 446-2967  
Vickie.Fernandes@sdcounty.ca.gov

**FILED**  
Clerk of the Superior Court

JUL 16 2021

By: S. McDonald, Clerk  
EAST COUNTY DIVISION

Attorneys for Petitioner,  
VICTOR TELLEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

**EAST COUNTY DIVISION**

In re

**VICTOR TELLEZ,**

Petitioner,

On Habeas Corpus

) No. EHC 1316

) Super. Ct. Case.: SCE369196

) The Honorable Judge Roderick W.  
) Shelton  
) Department E-9

**DENIAL**

(Cal. Rules of Ct., Rule 4.551(e).)

MEGAN MARCOTTE, Chief Deputy  
Office of the Alternate Public Defender  
County of San Diego  
VICKIE FERNANDES  
State Bar No. 239752  
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Attorneys for Petitioner,  
VICTOR TELLEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF SAN DIEGO**  
**EAST COUNTY DIVISION**

In re	)	No: EHC 1316
	)	Sup. Ct. Case.: SCE369196
<b>VICTOR TELLEZ,</b>	)	
	)	The Honorable Judge Roderick W.
Petitioner,	)	Shelton
	)	Department E-9
	)	
On Habeas Corpus.	)	<b>DENIAL</b>
	)	(Cal. Rules of Ct. Rule 4.551(e).)

**ALLEGATIONS**

Petitioner, VICTOR TELLEZ, respectfully submits his Denial in response to the Return to the Order to Show Cause issued on his petition for Writ of Habeas Corpus, by admitting, denying, and alleging as follows:

1. Mr. Tellez realleges each allegation made in his Petition for Writ of Habeas Corpus, filed on March 2, 2021.
2. Mr. Tellez realleges that he is unlawfully incarcerated pursuant to the defective and unconstitutional plea in San Diego County criminal case *People v. Tellez*, case number SCE369196. The date of judgment of conviction and sentence was

1 December 20, 2017.

2 3. Mr. Tellez realleges that his conviction under PC § 288(a) is a predicate for  
3 being SVP'ed in petition MH116049.

4 4. Mr. Tellez denies that in California, of all the inmates who are referred for  
5 screening prior to parole, this conclusion (being found an SVP), is reached in "only a  
6 small fraction of cases."

7 5. Mr. Tellez alleges that the percentage of inmates found to be SVP is  
8 irrelevant to the analysis of whether or not he received effective assistance of counsel in  
9 SCE369196.

10 6. Mr. Tellez realleges that he suffered actual prejudice as a result of his trial  
11 counsel's failure to properly advise him.

12 7. Mr. Tellez realleges that he would not have pleaded guilty in SCE369196 if  
13 he had known that he would be subject to a potential lifetime civil commitment as a  
14 Sexually Violent Predator (SVP).

15 8. Mr. Tellez denies that an SVP commitment in his case was "speculative."

16 9. Mr. Tellez alleges that an SVP commitment in his case was far more than  
17 "speculative; had counsel obtained a psychological evaluation, counsel would have been  
18 informed of Mr. Tellez's mental disorder and could have properly advised Mr. Tellez.

19 10. Mr. Tellez alleges that the likelihood of prevailing at trial is not part of the  
20 court's analysis in deciding prejudice. However, Mr. Tellez denies that it is likely he  
21 would have been convicted at trial; in fact, there are compelling reasons Mr. Tellez would  
22 have proceeded to trial had he known his plea would have subjected him to SVP  
23 commitment.

24 11. Mr. Tellez realleges that trial counsel provided ineffective assistance of  
25 failing to advise of SVP consequences.

26 12. Mr. Tellez realleges that counsel's errors violated his state and federal  
27 constitutional rights under the Sixth and Fourteenth Amendments to the U.S. Constitution.

1  
2 **POINTS AND AUTHORITIES**

3  
4 **ARGUMENT**

5 **I. MR. TELLEZ SUFFERED INEFFECTIVE ASSISTANCE OF**  
6 **COUNSEL BECAUSE HIS TRIAL ATTORNEY FAILED TO**  
7 **ADVISE MR. TELLEZ OF THE SEVERE AND POTENTIALLY**  
8 **LIFELONG POSSIBILITY OF SVP COMMITMENT**

9 A. The Sixth Amendment obligates defense counsel to provide  
10 constitutionally effective representation, which may include advice  
11 about collateral consequences.

12 As stated in Petitioner's original petition for a writ, in *People v. Moore* (1998) 69  
13 Cal. App. 4<sup>th</sup> 626, the California Supreme Court analogized SVP consequences to  
14 deportation. "SVP Act proceedings are more analogous to deportation [than the  
15 commitment proceedings Moore cited], because an SVP commitment, like deportation,  
16 depends on additional findings by a different tribunal after the defendant has been  
17 sentenced." (*Id.*, at p. 633.) That Court went on to state that the obligation of a court (not  
18 counsel) to advise a defendant of deportation arose from statute – specifically Penal Code  
19 Section 1016.5. Admittedly, there is no analogous statute requiring a court to advise  
20 defendants of potential SVP consequences. As stated in *Moore*, the court is required to  
21 advise defendants of direct consequences, and not of collateral consequences. *Moore*  
22 further held that SVP consequences were more collateral than direct, and therefore the  
23 court had no duty to advise the defendant. Notably, *Moore* did not address the  
24 **responsibilities** of defense counsel. Nowhere does *Moore* or *Ibanez* hold anything in  
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1 respect to the standard of care of defense counsel, nor does either case engage in a  
2 *Strickland* analysis.

3       However, the obligations of defense counsel are often far greater than those of the  
4 court. Defense counsel has unique responsibilities to his client. As the California Supreme  
5 Court has explained, “[d]efense counsel clearly has far greater duties toward the defendant  
6 than has the court taking a plea.” (*In re Resendiz* (2001) 25 Cal. 4th 230, 246, *abrogated on*  
7 *other grounds by Padilla, supra.*) In the immigration context, Penal Code Section 1016.5  
8 places an actual burden on the court to advise an individual about possible deportation if  
9 they are not a U.S. citizen. But even then, this court advisal is not the same as a competent  
10 advice from counsel, nor is it a substitute for competent advice from counsel. (*See*  
11 *Resendiz, supra*; *See also People v. Patterson* (2017) 2 Cal. 5th 885, 898-899).

12       Neither this court or any reviewing court has to overrule or ignore *Moore* or *Ibanez*  
13 to find that Mr. Tellez suffered ineffective assistance of counsel. Petitioner asks only that  
14 the tension that has existed between *Moore/Ibanez* and *Padilla* be resolved. *Moore* and  
15 *Ibanez* are narrow in their scope, limiting the duties of the trial court during a plea; there is  
16 nothing to indicate the California courts intended for those holdings to apply to defense  
17 counsel.

18       In fact, *Padilla* suggests that, “reasonable professional assistance” under *Strickland*  
19 may sometimes require defense counsel to advise a client about collateral consequences.  
20 “We, however, have never applied a distinction between direct and collateral consequences  
21 to define the scope of constitutionally ‘reasonable professional assistance’ required under  
22 *Strickland* [citations]. Whether that distinction is appropriate is a question we need not  
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1 consider in this case ....” (*Padilla, supra*, at p. 365.) The High Court went on to explain  
2 that “[t]he collateral versus direct distinction is thus ill-suited to evaluating a *Strickland*  
3 claim concerning the specific risk of deportation.” (*Id.*) The Court concluded that advice  
4 regarding deportation is thus not categorically removed from the Sixth Amendment right to  
5 counsel.  
6

7 The same can be said for SVP consequences. SVP commitment can potentially last  
8 for a lifetime. Inmates are not only subjected to confinement in a state hospital, but to  
9 potentially unwanted treatments, therapy and medications. If deportation is a form of  
10 banishment, then SVP commitment most assuredly is as well. SVP commitment requires  
11 that an inmate be removed from all of society for perhaps the rest of his natural life. Such a  
12 consequence can only be described as severe. As the US Supreme Court said in *Padilla*, “it  
13 is quintessentially the duty of counsel to provide her client with available advice about an  
14 issue like deportation, and the failure to do so “clearly satisfies the first prong of the  
15 *Strickland* analysis.” (*Padilla, supra*, at p. 370, quoting *Hill v. Lockhart* (1985) 474 U.S.  
16 52, 62.) The Supreme Court specifically said an issue **like** deportation. SVP consequences  
17 are **like** deportation. The California Supreme Court has already told us as much, when  
18 they analogized SVP to deportation in the *Moore* case. (See *Moore, supra*, at p. 633.)  
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23 B. An SVP commitment was not speculative or  
24 unlikely in Mr. Tellez’s case.

25 An SVP commitment is not an “unlikely,” “unforeseen,” or “unknowable”  
26 consequence, as the prosecution characterizes it. (People’s Return, p. 14). Rather, every  
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1 defendant convicted of this charge – PC § 288(a) – who is committed to the state prison,  
2 undergoes an SVP analysis prior to his or her release. The SVP process is thus inextricably  
3 linked to the criminal proceedings. It is the criminal conviction and sentence that trigger  
4 the SVP process. Obviously there is no way for counsel to know exactly what his or her  
5 client's mental state will be at the time of the future SVP commitment. But there is also no  
6 way for defense counsel to know with 100% certainty that a client will actually be deported  
7 in immigration proceedings; defense counsel in a criminal case does not know if his or her  
8 client will qualify for cancellation of removal or some other civil/federal relief from  
9 deportation. Counsel is not required to have a crystal ball. But counsel *is* required to  
10 advise his or her client of those consequences that inexorably flow from the criminal  
11 conviction. In Mr. Tellez's case, an SVP petition is one such consequence.

14         Petitioner does not dispute that in order to be SVP'ed, an inmate must have a  
15 diagnosed mental disorder. Real Party in Interest DA argues that it would be impossible for  
16 defense counsel to opine on his or her client's future mental state, thus freeing him of the  
17 burden of advising a client of potential SVP consequences at the time of the plea. This is a  
18 fallacious argument, however. First, counsel is not required to have a crystal ball. Counsel  
19 is required to give the client reasonably professional assistance. A mental disorder of this  
20 nature does not spontaneously develop during a 3-year prison term. A mental disorder is  
21 something an inmate struggles with throughout his or her adult life, if not before, and  
22 presumably is a cause or explanation for why the qualifying conviction occurred in the first  
23 place. For these reasons, the failure of Tellez's trial counsel in obtaining a psychological  
24 evaluation prior to Tellez's guilty plea, becomes even more disastrous. Had counsel  
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1 obtained the psychological evaluation, counsel would have been informed and would have  
2 known that Mr. Tellez suffered from a mental disorder that could likely subject him to SVP  
3 commitment. Notably, doctors from CDCR diagnosed Mr. Tellez with Freutterism from  
4 the DSM-V. (See Exhibit H, attached to original petition for writ of habeas corpus.) This,  
5 combined with Mr. Tellez's history of sex offenses, and the new conviction for a  
6 qualifying offense of PC § 288(a), made it all the more likely Mr. Tellez would indeed be  
7 subject to an SVP commitment. That is not speculative at all, but rather seems very likely  
8 indeed.  
9

10  
11 **II. MR. TELLEZ SUFFERED PREJUDICE DUE TO COUNSEL'S**  
12 **FAILURES. MR TELLEZ WOULD HAVE PROCEEDED TO**  
13 **TRIAL HAD HE KNOWN HE WOULD BE SUBJECT TO AN SVP**  
14 **COMMIT.**

15 The U.S. Supreme Court has held that prejudice is established when there is "a  
16 reasonable probability that, but for counsel's unprofessional errors, the result of the  
17 proceeding would have been different." (*Strickland v. Washington, supra*, 466 U.S. at p.  
18 669.) In the context of plea deals, prejudice exists when there is "a reasonable probability  
19 that, but for counsel's errors, [Defendant] would not have pleaded guilty and would have  
20 insisted on going to trial." (*Hill v. Lockhart, supra*, 474 U.S. at p. 59; *In re Alvernaz, supra*,  
21 2 Cal.4th at p. 934; *In re Vargas, supra*, 83 Cal.App.4th at p. 1140; *People v. Maguire,*  
22 *supra*, 67 Cal.App.4th at p. 1032.) Contrary to Real Party in Interest DA's position, and  
23 as stated in *Lee v. United States* (2017) 137 S.Ct. 1958, the likelihood of prevailing at a  
24 jury trial is not relevant to these findings.  
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“When a defendant alleges his counsel’s deficient performance led him to accept a guilty plea rather than go to trial, we do not ask whether, had he gone to trial, the result of that trial ‘would have been different’ than the result of the plea bargain. That is because, while we ordinarily ‘apply a strong presumption of reliability to judicial proceedings,’ ‘we cannot accord’ any such presumption ‘to judicial proceedings that never took place.’”

[Citation.] (*Lee, supra*, 137 S.Ct., at p. 1965.)

Furthermore, Mr. Tellez submits that he would have proceeded to trial had he known of the extremely severe SVP consequences of his plea. (See Tellez's declaration, Exhibit F) The circumstances of his case do corroborate this. First, there were triable issues in Mr. Tellez's case, including whether or not the prosecution could prove sexual intent beyond a reasonable doubt. Second, no extrinsic evidence is necessary to prove the common-sense notion that no individual wants to spend his or her life locked up in state prison or in a state hospital for an indeterminate amount of time. The Real Party in Interest DA suggests that Mr. Tellez must provide some extrinsic evidence to support his declaration that he did not want to spend his entire life locked away from society. It is ludicrous to argue that any extrinsic evidence of this basic human desire is needed. It seems abundantly clear that had Mr. Tellez known that he would be subject to a lifetime civil commitment based on his plea to PC § 288(a), he would have taken his chances at trial and hoped for a better outcome.

## CONCLUSION

Mr. Tellez suffered ineffective assistance of counsel and he suffered prejudice, when his trial attorney failed to advise him of the severe consequences of an SVP

1 commitment. An SVP commitments flowed directly from the criminal conviction and  
2 sentence in this case, and every case in which an inmate is sent to state prison on a  
3 qualifying SVP offense. Defense counsel often has far greater obligations towards his or  
4 her client than the trial does when accepting a plea bargain. Nothing in the *Strickland*  
5 analysis limits effective assistance of counsel to "direct" consequences. SVP  
6 consequences are severe, long-lasting, and very much like immigration consequences and  
7 deportation. Had Mr. Tellez known he would be subject to a lifetime in the state hospital,  
8 he would have proceeded to trial and taken his chances with his viable defense. Mr.  
9 Tellez's petition should be granted, and he should be allowed to withdraw his plea.

10  
11  
12 DATED: July 16, 2021

13 Respectfully Submitted,  
14 MEGAN MARCOTTE, Chief Deputy  
Office of the Alternate Public Defender

15  
16 By: Fernandes, Vickie Digitally signed by Fernandes,  
Vickie  
Date: 2021.07.16 10:12:54 -07'00'  
17 VICKIE FERNANDES  
18 Deputy Public Defender  
19 Attorneys for Petitioner  
20 VICTOR TELLEZ  
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28

JUL 16 2021

By: S. McDonald, Clerk  
EAST COUNTY DIVISION**PROOF OF SERVICE****In the Matter of the Application of VICTOR TELLEZ****Case No.: EHC 1316****Super. Ct. Case.: SCE369196**

I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My office address is 451 "A" Street, Suite 1200, San Diego, California 92101

On \_\_\_\_\_ I personally served the attached **PETITION FOR WRIT OF HABEAS CORPUS** to the following parties via hand delivery:

San Diego Superior Court  
The Honorable Judge Roderick Shelton  
Dept. E-9  
250 E. Main Street  
El Cajon, CA 92020

San Diego Superior Court, *Respondent*  
Attn: Judicial Services  
1100 Union Street, San Diego, CA 92101

San Diego County District Attorney, *Real Party in Interest*  
Attn: Appellate Department  
330 West Broadway, San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_ in San Diego, California.

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

## EXHIBIT L



**FILED**  
Clerk of the Superior Court

**MAY 04 2021**

**By: C. Ami, Deputy**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, EAST COUNTY DIVISION**

IN THE MATTER OF THE APPLICATION OF: )	EHC 1316
)	
)	SCE 369196
VICTOR RAUL TELLEZ,	)
)	ORDER TO SHOW CAUSE ON
)	PETITION FOR WRIT OF HABEAS
PETITIONER.	)
)	CORPUS; ORDER DENYING
)	PETITION FOR WRIT OF HABEAS
)	IN PART

THIS COURT HAVING READ THE PETITION FOR WRIT OF HABEAS CORPUS AND  
THE FILE IN THE ABOVE CAPTIONED MATTER FINDS AS FOLLOWS:

On December 11, 2017, Petitioner entered a guilty plea to lewd act upon a child in violation of Penal Code section 288(a). On December 20, 2017, Petitioner was sentenced to the stipulated term of three years in state prison.

Upon Petitioner's release on parole, Petitioner was transferred to the San Diego Superior Court for civil commitment proceedings pursuant to Welfare and Institutions Code section 6600 et seq. On May 21, 2019, the People filed a petition for involuntary treatment of a sexually violent predator in case number MH 116049.

On March 2, 2021, Petitioner filed the present petition for a writ of habeas corpus. Petition contends he received ineffective assistance of counsel during the underlying criminal case.

1 A petitioner in habeas corpus bears the burden of proving the facts upon which he or  
2 she bases his or her claim for relief. (*In re Riddle* (1962) 57 Cal.2d 848, 852.) Every petitioner,  
3 even one filing in pro per, must set forth a prima facie statement of facts which would entitle  
4 him or her to habeas corpus relief under existing law. (*In re Bower* (1985) 38 Cal.3d 865, 872;  
5 *In re Hochberg* (1970) 2 Cal.3d 870, 875, fn. 4.) A petitioner for a writ of habeas corpus bears  
6 a heavy burden to plead and prove sufficient grounds for relief. (*People v. Duvall* (1995) 9  
7 Cal.4<sup>th</sup> 464, 474.)

8 "When presented with a petition for a writ of habeas corpus, a court must first determine  
9 whether the petition states a prima facie case for relief--that is, whether it states facts that, if  
10 true, entitle the petitioner to relief--and also whether the stated claims are for any reason  
11 procedurally barred. (*In re Clark* (1993) 5 Cal.4<sup>th</sup> 750, 769, fn. 9.)" *People v. Romero* (1994) 8  
12 Cal.4<sup>th</sup> 728, 737.

13 As to Petitioner's argument that he received ineffective assistance of counsel when  
14 counsel failed to conduct an investigation into the allegations in the case, failed to obtain a  
15 psychological evaluation, and failed to effectively communicate with Petitioner, the petition will  
16 be summarily denied as to these issues as being untimely presented.

17 A petition for writ of habeas corpus must be timely filed. (*In re Robbins* (1988) 18 Cal.4<sup>th</sup>  
18 770, 778.) "[I]t is the practice of this court to require that one who belatedly presents a collateral  
19 attack...explain the delay in raising the question." (*In re Swain* (1949) 34 Cal.2d 300, 302.) The  
20 burden is one placed even on indigent petitioners appearing in propria persona. (See *In re*  
21 *Clark* (1993) 5 Cal.4<sup>th</sup> 750, 765.)

22 The Court in *Walker v. Martin* (2011) 562 U.S. 307, 312, stated, "[a] prisoner must seek  
23 habeas relief without 'substantial delay,' (citations omitted), as 'measured from the time the  
24 petitioner or counsel knew, or reasonably should have known, of the information offered in  
25 support of the claim and the legal basis for the claim,' *Robbins*, 18 Cal.4<sup>th</sup> at 787, 77 Cal.Rptr.2d  
26 153, 959 P.2d, at 322. Petitioners in noncapital cases have 'the burden of establishing (i)  
27 absence of substantial delay, (ii) good cause for the delay, or (iii) that the claim falls within an  
28 exception to the bar of untimeliness.' *Id.*, at 780, 77 Cal.Rptr.2d 153, 959 P.2d, at 317."

1       Petitioner has failed to provide a sufficient explanation for the delay in filing the present  
2 petition. Petitioner's guilty plea was entered on December 11, 2017. This petition was not filed  
3 until March 2, 2021. There has been a delay of over three years. Petitioner has failed to point  
4 to any particular circumstances sufficient to justify the substantial delay in filing this petition. As  
5 there is no reasonable explanation for the delay in raising the issues relating to the investigation  
6 into and possible defenses to the underlying offense, Petitioner's claims are not timely and the  
7 petition will be summarily denied.

8       With regard to Petitioner's claim that he was not advised he was subject to civil  
9 commitment proceedings as a sexual violent predator, the court finds this claim is timely.  
10 Petitioner contends he did not become aware of this potential consequence until he was  
11 released on parole.

12       A defendant is entitled to the reasonable competent assistance of an attorney acting as  
13 his diligent and conscientious advocate. (*In re Marquez* (1992) 1 Cal.4<sup>th</sup> 584, 602; *In re Ross*  
14 (1995) 10 Cal.4<sup>th</sup> 184, 201. "A defendant claiming ineffective representation bears the burden  
15 of proving by a preponderance of the evidence both (1) that counsel's performance was  
16 deficient, i.e., that the representation fell below an objective standard of reasonableness, and  
17 (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result  
18 would have been more favorable to defendant, i.e., a probability sufficient to undermine  
19 confidence in the outcome. (Citations omitted.)" *In re Ross, supra*, 10 Cal.4<sup>th</sup> at p. 201. (See  
20 also *Strickland v Washington* (1984) 466 US 668; *People v Waidla* (2000) 22 Cal.4<sup>th</sup> 690; *In re*  
21 *Cudjo* (1999) 20 Cal.4<sup>th</sup> 673.)

22       In the context of guilty pleas, the prejudice element focuses on whether the outcome of  
23 the plea process was affected. "[I]n order to satisfy the 'prejudice' requirement, the defendant  
24 must show that there is a reasonable probability that, but for counsel's errors, he would not  
25 have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart* (1985) 474 U.S.  
26 52, 59.

27       After a review of the alleged deficiencies of defense counsel set forth in the petition,  
28 Petitioner has set forth a factual basis for his claim that counsel failed to advise him that

1 pleading guilty to the underlying crime would subject him to civil commitment proceedings.

2       Petitioner has submitted a declaration stating that his attorney did not tell him that he  
3 could potentially spend the rest of his life incarcerated as a sexually violent predator and, had  
4 his attorney told him about the possibility of lifetime incarceration, he would not have pled guilty.

5       Further, Item No. 7f on the change of plea form states, "My attorney has explained to  
6 me that other possible consequences of this plea may be: (Circle applicable consequences.)"  
7 Consequence No. 14, Sexually Violent Predator Law, was not circled. Thus, Petitioner was not  
8 advised of the possible consequence on the change of plea form.

9       Based on the foregoing, Petitioner has set forth a prima facie case that he was provided  
10 ineffective assistance of counsel with regard to the issue of advising Petitioner of the civil  
11 commitment proceedings as a sexual violent predator. Accordingly, Respondent is ordered to  
12 show cause why the relief requested in the petition should not be granted.

13       Respondent shall serve on Petitioner's counsel and file with the court their return to the  
14 petition 30 days from the date of this Order. (California Rules of Court, rule 4.551(d).) The  
15 return is to be filed at the Office of the Clerk of the Superior Court of the State of California,  
16 County of San Diego, East County Division.


17       Within 30 days after service and filing of the return to the order to show cause, Petitioner  
18 may serve on Respondent and file with the court a denial. (California Rules of Court, rule  
19 4.551(e).)

20       The clerk's office is directed to serve a copy of the Order on Petitioner's counsel, Deputy  
21 Alternate Public Defender Kristen Haden.

22       The clerk's office is directed to serve a copy of the Order and a copy of the petition on  
23 the Office of the San Diego County District Attorney – Appellate Division (MS: D-422, Attn:  
24 Deputy District Attorney Mark Amador).

25 **IT IS SO ORDERED**

26 DATED: 5/4/21

27   
28 \_\_\_\_\_  
RODERICK W. SHELTON  
JUDGE OF THE SUPERIOR COURT

# EXHIBIT M

**FILED**  
Clerk of the Superior Court

SEP 15 2021

By: N. Smith, Clerk  
EAST COUNTY DIVISION

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, EAST COUNTY DIVISION**

IN THE MATTER OF THE APPLICATION OF: )	
)	EHC 1316
)	
VICTOR RAUL TELLEZ,	) SCE 369196
)	
PETITIONER.	) ORDER DENYING
)	PETITION FOR WRIT
)	OF HABEAS CORPUS
)	

THIS COURT HAVING READ THE PETITION FOR WRIT OF HABEAS CORPUS AND  
THE FILE IN THE ABOVE CAPTIONED MATTER FINDS AS FOLLOWS:

On December 11, 2017, Petitioner entered a guilty plea to committing a lewd act upon  
a child in violation of Penal Code section 288(a). On December 20, 2017, Petitioner was  
sentenced to the stipulated term of three years in state prison.

Upon Petitioner's release on parole, Petitioner was transferred to the San Diego  
Superior Court for civil commitment proceedings pursuant to Welfare and Institutions Code  
section 6600 et seq. On May 21, 2019, the People filed a petition for involuntary treatment of  
a sexually violent predator ("SVP") in case number MH 116049.

On March 2, 2021, Petitioner filed the present petition for a writ of habeas corpus. On  
May 4, 2021, this court issued an order to show cause. On June 17, 2021, Respondent filed a  
return. On June 21, 2021, Respondent filed "Exhibit 1" to the return. On July 16, 2021,

1 Petitioner filed a denial.

2 After consideration of the verified petition, the return, the denial, and the relevant  
3 statutory and case law, the court finds that an evidentiary hearing is not required in order to  
4 determine if the Petitioner is entitled to the relief sought. (California Rules of Court, rule  
5 4.551(f).) The court finds that the petition may be decided on the pleadings.

6 Petitioner claims he was provided ineffective assistance of counsel in that counsel failed  
7 to advise him he was subject to civil commitment proceedings as a SVP upon his guilty plea.

8 A defendant is entitled to the reasonable competent assistance of an attorney acting as  
9 his diligent and conscientious advocate. (*In re Marquez* (1992) 1 Cal.4th 584, 602; *In re Ross*  
10 (1995) 10 Cal.4th 184, 201. "A defendant claiming ineffective representation bears the burden  
11 of proving by a preponderance of the evidence both (1) that counsel's performance was  
12 deficient, i.e., that the representation fell below an objective standard of reasonableness, and  
13 (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result  
14 would have been more favorable to defendant, i.e., a probability sufficient to undermine  
15 confidence in the outcome. (Citations omitted.)" *In re Ross, supra*, 10 Cal.4th at p. 201. (See  
16 also *Strickland v. Washington* (1984) 466 U.S. 668; *People v. Waidla* (2000) 22 Cal.4th 690;  
17 *In re Cudjo* (1999) 20 Cal.4th 673.)

18 In the context of guilty pleas, the prejudice element focuses on whether the outcome of  
19 the plea process was affected. "[I]n order to satisfy the 'prejudice' requirement, the defendant  
20 must show that there is a reasonable probability that, but for counsel's errors, he would not  
21 have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart* (1985) 474 U.S.  
22 52, 59.

23 When a client is entering a guilty plea, an attorney is generally not duty-bound to advise  
24 the client of collateral consequences that do not inexorably follow a guilty plea. (*People v.*  
25 *Aguirre* (2011) 199 Cal.App.4th 525, 528.) One such collateral consequence is any  
26 commitment a defendant may suffer under the SVP Act. (See *People v. Ibanez* (1999) 76  
27 Cal.App.4th 537, 546; *People v. Moore* (1998) 69 Cal.App.4th 626, 630-631.)

28 /////

1        However, the issue in this petition is addressing whether an attorney's duties should be  
2 expanded in such a situation and whether the failure to advise is ineffective assistance of  
3 counsel. Neither the California Supreme Court nor any California appellate court has  
4 addressed the issue of whether an attorney provides ineffective assistance of counsel when  
5 he or she fails to advise a client of the possibility of SVP proceedings when entering a guilty  
6 plea.

7        An argument advanced by Petitioner is that the required advisal of deportation  
8 proceedings is comparable to the advisal for SVP proceedings. The Court in *Padilla v. Kentucky*  
9 (2010) 559 U.S. 356, 365–366, stated, “Our law has enmeshed criminal convictions and the  
10 penalty of deportation for nearly a century, (citation). And, importantly, recent changes in our  
11 immigration law have made removal nearly an automatic result for a broad class of noncitizen  
12 offenders. Thus, we find it “most difficult” to divorce the penalty from the conviction in the  
13 deportation context. (Citation.)... [¶] Deportation as a consequence of a criminal conviction is,  
14 because of its close connection to the criminal process, uniquely difficult to classify as either a  
15 direct or a collateral consequence. The collateral versus direct distinction is thus ill suited to  
16 evaluating a *Strickland* claim concerning the specific risk of deportation.”

17        The Court in *Chaidez v. United States* (2013) 568 U.S. 342, 355, stated, “Even in *Padilla*  
18 we did not eschew the direct-collateral divide across the board. See 559 U.S., at —, 130 S.Ct.,  
19 at 1481 (‘Whether that distinction is [generally] appropriate is a question we need not consider  
20 in this case’). Rather, we relied on the special “nature of deportation”—the severity of the  
21 penalty and the ‘automatic’ way it follows from conviction—to show that ‘[t]he collateral versus  
22 direct distinction [was] ill-suited’ to dispose of *Padilla*’s claim. *Id.*, at —, 130 S.Ct., at 1482.”

23        Being subject to SVP proceedings is not unique in the same manner as deportation  
24 proceedings. Deportation is automatic based on the charge a noncitizen defendant is convicted  
25 of and it is considered severe, as one is excluded from the country. A commitment based on  
26 SVP proceedings is not immediate, automatic, or mandatory. With SVP proceedings it is  
27 unknown if a person will be subject to a civil commitment after serving his or her criminal  
28 sentence. The prior predicate offense itself will not trigger a commitment. Proceedings must be



1 initiated and specific findings made before a SVP commitment can be imposed.

2       The issue of ineffective assistance of counsel when the SVP collateral consequence  
3 advisal has not been provided by counsel has been litigated by other State courts and decided  
4 both ways. The following State supreme courts found that counsel did not provide ineffective  
5 assistance of counsel: *State v. LeMere* (2016) 368 Wis.2d 624, 879 N.W.2d 580 [Wisconsin];  
6 *Hamm v. State* (2013) 403 S.C. 461, 744 S.E.2d 503 (2013) [South Carolina]; and *Page v.*  
7 *South Carolina* (2005) 364 S.C. 632, 615 S.E.2d 740 [South Carolina]. The court in *People v.*  
8 *Hughes* (2012) 2012 IL 112817, 983 N.E.2d 439 [Illinois] found that counsel was ineffective for  
9 failing to advise of the collateral consequence. A number of lower courts in States with similar  
10 SVP proceedings as California have rendered conflicting decisions.

11       In the present case, there is no dispute that defense counsel did not inform Petitioner  
12 when he was entering his guilty plea that he was subject to SVP proceedings after his prison  
13 term was completed. This court finds that the failure to provide such an advisal does not  
14 establish that counsel's representation fell below an objective standard of reasonableness.

15       Petitioner was convicted of a single violation of Penal Code section 288(a). Two other  
16 alleged Penal Code section 288(a) violations that occurred on the same date were dismissed.  
17 There is no claim by Petitioner that counsel should have been aware the Petitioner would  
18 inevitably be a person adjudged a SVP after serving his state prison commitment for this  
19 offense. Thus, the SVP commitment was not a unique consequence that was unquestionably  
20 going to arise out of the underlying plea. The SVP civil commitment would only be imposed  
21 after screening, an evaluation, the filing of a petition, a probable cause hearing, and a trial by  
22 either the court or jury. At the trial, the State is required to prove beyond a reasonable doubt  
23 that Petitioner is a SVP, which means he has been convicted of a sexually violent offense and  
24 has a diagnosed mental disorder that makes him a danger to the health and safety of others in  
25 that it is likely he will engage in sexually violent criminal behavior. (See Welf. & Inst. Code §  
26 6600 et seq.)

27       As the question of whether or not a defendant will be subject to SVP proceedings at the  
28 conclusion of his criminal commitment is complete speculation on the part of defendant's

1 counsel, it is not reasonable to find that counsel was constitutionally deficient in failing to advise  
2 a defendant that he or she would be subject to such proceedings.

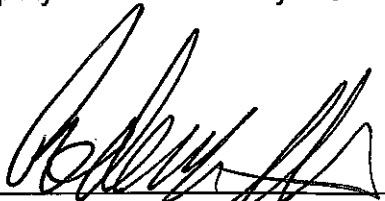
3 Based on the forgoing, the court finds that counsel's failure to advise Petitioner of the  
4 possibility he could be civilly committed as a result of SVP proceedings did not constitute  
5 ineffective assistance of counsel.

6 Accordingly, the petition for a writ of habeas corpus is hereby DENIED.

7 The clerk's office is directed to serve a copy of the Order and a copy of the petition on:  
8 (1) Alternate Public Defender Vickie Fernandes and (2) Deputy District Attorney Martin Doyle.

9 **IT IS SO ORDERED.**

10  
11 DATED: 9/15/21

  
\_\_\_\_\_  
RODERICK W. SHELTON  
JUDGE OF THE SUPERIOR COURT

## EXHIBIT N

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal  
Fourth Appellate District  
**FILED ELECTRONICALLY**  
11/30/2021  
Kevin J. Lane, Clerk  
By: J. Yost

In re VICTOR TELLEZ

on

Habeas Corpus.

D079716

(San Diego County  
Super. Ct. Nos. SCE369196  
& EHC1316)

THE COURT:

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Aaron, and Irion.

The People charged Victor Tellez with three counts of committing a lewd or lascivious act on a child under the age of 14 years (Pen. Code, § 288, subd. (a)), each of which involved a different victim. Tellez pled guilty to one count, and as the factual basis for the plea admitted he willfully touched a child under the age of 14 years with the intent of arousing his sexual desires. He also stipulated to a three-year prison term. In exchange, the People dismissed the two other counts. The court imposed the stipulated prison term on December 20, 2017.

Tellez was released on parole on August 1, 2019, and was immediately arrested so that he could be arraigned the next day on a petition for

involuntary commitment as a sexually violent predator (Welf. & Inst. Code, § 6600 et seq.). He remains in jail pending the commitment proceedings.

On March 2, 2021, Tellez filed in the superior court a petition for writ of habeas corpus alleging ineffective assistance of counsel. Tellez alleged that as a result of inadequate investigation, counsel failed to obtain a potentially exculpatory psychological evaluation that when Tellez touched the victim he was too intoxicated to form the specific intent required for criminal liability. Tellez further alleged that counsel was incompetent for failing to tell him that after release from prison he could be involuntarily committed for life as a sexually violent predator. Tellez further alleged he would not have pled guilty, and would have insisted on going to trial, but for counsel's deficient performance. The superior court summarily denied the claim alleging inadequate investigation as untimely; and, after issuing an order to show cause on the claim alleging failure to advise of the potential commitment for life as a sexually violent predator and receiving a response from the People, the court denied that claim as well.

By the present petition, Tellez renews the claims of ineffective assistance of counsel that the superior court rejected. Tellez again complains that counsel failed to conduct an adequate investigation into the facts of the case and failed to communicate with him about the case; and contends that had counsel done so, he could have obtained a psychological evaluation that severe intoxication and/or an underlying mental health condition prevented him from forming the mental state required for a conviction of committing a lewd or lascivious act on a child under the age of 14. Tellez also again complains that counsel failed to warn him that by pleading guilty, he could be subject to a lifetime commitment as a sexually violent predator. Tellez alleges he "would have proceeded to trial had defense counsel been effective

at the trial court level.” Tellez asks this court to issue an order to show cause and vacate the judgment of conviction.

Tellez is not entitled to habeas corpus relief. His petition is barred as untimely, because he waited more than three years after sentencing and 19 months after arrest for arraignment on the petition for commitment as a sexually violent predator before collaterally attacking the judgment in the superior court, and he has offered no explanation for the substantial delay. (*Robinson v. Lewis* (2020) 9 Cal.5th 883, 897; *In re Sanders* (1999) 21 Cal.4th 697, 703.) “[T]he filing of untimely claims without any serious attempt at justification is an example of abusive writ practice.” (*In re Reno* (2012) 55 Cal.4th 428, 460.) The petition is also barred because Tellez did not appeal the judgment and obtain the certificate of probable cause needed to attack the validity of a guilty plea in an appellate court. (Pen. Code, § 1237.5; *In re Brown* (1973) 9 Cal.3d 679, 683-683.) “A defendant who challenges the validity of such a plea on the ground that trial counsel rendered ineffective assistance in advice regarding the plea may not circumvent the requirements of section 1237.5 by seeking a writ of habeas corpus.” (*In re Chavez* (2003) 30 Cal.4th 643, 651.) Tellez’s “failure to affirmatively address the applicability of procedural obstacles to consideration of the claims raised in [his] habeas corpus petition justifies summary denial without the court’s consideration of the merits.” (*In re Reno, supra*, at p. 511.)

Tellez’s petition also fails to state a prima facie case for habeas corpus relief. To plead a claim of ineffective assistance of counsel in plea bargaining, the defendant must identify acts or omissions that fell outside the wide range of competence demanded of counsel in criminal cases and must allege facts showing that, but for those acts or omissions, there is a reasonable probability the defendant would not have pled guilty and would have insisted

on going to trial. (*Hill v. Lockhart* (1985) 474 U.S. 52, 56, 59; *In re Resendiz* (2001) 25 Cal.4th 230, 248, 253; *In re Alvernaz* (1992) 2 Cal.4th 924, 934.) A defendant's assertions that counsel performed incompetently and that had counsel not done so the defendant would have rejected the plea offer are insufficient. Rather, the defendant's assertions "must be corroborated independently by objective evidence." (*In re Alvernaz, supra*, at p. 938; accord, *In re Resendiz, supra*, at p. 253; *In re Vargas* (2000) 83 Cal.App.4th 1125, 1140.) Tellez has submitted no evidence he was severely intoxicated or suffered from a mental health condition when he touched the victim, and no declaration from a psychologist or other evidence that such intoxication or condition prevented him from forming the specific intent to commit a lewd or lascivious act on the victim. He thus has not sustained his burden to "establish the nature and relevance of the evidence that counsel failed to present or discover," as he must do to establish "prejudice as a 'demonstrable reality,' not simply speculation as to the effect of the errors or omissions of counsel." (*People v. Williams* (1988) 44 Cal.3d 883, 936-937.) Nor has Tellez sustained his pleading burden on the claim alleging counsel performed deficiently by failing to advise him of the potential commitment for life as a sexually violent predator. Tellez contends commitment for life as a sexually violent predator is such a "severe sanction" that counsel must advise a defendant of such a commitment whenever it is a potential consequence of a guilty plea. He analogizes to deportation, about which courts have held counsel must advise a defendant when it is a potential consequence of a guilty plea. This court recently rejected that contention, and analogy, and decided counsel had no obligation to warn the defendant that commitment as a sexually violent predator was a possible consequence of pleading guilty to a sex crime. (*People v. Codinha* (2021) \_\_\_\_ Cal.App.5th \_\_\_\_, \_\_\_\_ [2021 WL

5501117 at pp. \*1, \*8-\*12].) We adhere to that decision, which defeats Tellez's claim.

The petition is denied.

IRION, Acting P. J.

Copies to: All parties



## EXHIBIT O

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re VICTOR RAUL TELLEZ

on

Habeas Corpus.

D079716

(San Diego County  
Super. Ct. No. SCE369196)

ORIGINAL PROCEEDING in habeas corpus. Petition denied.

Megan Marcotte, Chief Deputy Alternate Public Defender, Vickie Fernandes, Gilson Gray and Anthony Parker, Deputy Alternate Public Defenders, for Petitioner.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Melissa Mandel, Nora Weyl, and Joy Utomi, Deputy Attorneys General, for Respondent.

By petition for writ of habeas corpus, Victor Raul Tellez asks this court to vacate his conviction based on a plea of guilty to committing a lewd and lascivious act on a child under the age of 14 years. He complains his appointed counsel provided ineffective assistance by failing to advise him before the plea that he could be subject to lifetime commitment as a sexually

violent predator after service of the prison term. As we shall explain, Tellez has not stated a prima facie case for relief. We therefore deny the petition.

## I.

### BACKGROUND

The People charged Tellez with three counts of committing a lewd and lascivious act on a child under the age of 14 years (Pen. Code, § 288, subd. (a)), each of which involved a different victim. Tellez pled guilty to one count, and as the factual basis for the plea admitted he willfully touched the back of a child under the age of 14 years with the intent to arouse his own sexual desires. He also stipulated to a three-year prison term. In exchange, the People dismissed the two other counts. The court imposed the stipulated prison term on December 20, 2017.

Tellez was released from prison on parole on August 1, 2019. He was immediately arrested and was arraigned on a petition for involuntary commitment under the Sexually Violent Predator Act (SVPA; Welf. & Inst. Code, § 6600 et seq.) the following day. Tellez remains in jail while the commitment proceedings are pending.

On March 2, 2021, Tellez filed in the superior court a petition for writ of habeas corpus alleging ineffective assistance of counsel. He alleged that as a result of inadequate investigation, counsel failed to obtain a potentially exculpatory psychological evaluation that when he touched the victim he was too intoxicated to form the specific intent required for conviction. Tellez further alleged counsel was incompetent for failing to tell him that after release from prison he could be involuntarily committed for life under the SVPA. Tellez claimed he would not have pled guilty and would have gone to trial but for counsel's deficient performance. The superior court summarily denied the claim of inadequate investigation as untimely; and, after issuing

an order to show cause on the claim of failure to advise of the potential SVPA commitment and receiving a return from the district attorney, the court denied that claim as well.

Tellez continued to press his claims of ineffective assistance of counsel by filing a new petition for writ of habeas corpus in this court. We summarily denied the petition as procedurally barred and for failure to state a prima facie case for relief. The Supreme Court of California granted Tellez's petition for review and transferred the matter to this court with directions to vacate our summary denial order and to issue an order directing the Secretary of the Department of Corrections and Rehabilitation (the Secretary) "to show cause, why relief should not be granted on the ground trial counsel rendered ineffective assistance by failing to advise [Tellez] of the potential for commitment as a sexually violent predator as a consequence of his plea." We complied, and the Secretary filed a return and Tellez a traverse.

## II.

### DISCUSSION

#### A. *Parties' Contentions*

Tellez contends his decision to waive his trial-related rights and plead guilty was not knowing, intelligent, and voluntary, because counsel failed to tell him that by doing so he could be subject to lifetime commitment under the SVPA. Analogizing to deportation as a consequence of a guilty plea by a noncitizen, Tellez contends an SVPA commitment is such "an extremely 'serious sanction' " that counsel must advise the defendant of the possibility of its imposition before the defendant pleads guilty, and if counsel fails to do so the defendant may withdraw the plea. He further contends that had he

been advised of a possible SVPA commitment, he would not have pled guilty and would have proceeded to trial. Tellez asks us to vacate his conviction.<sup>1</sup>

The Secretary responds that the petition is procedurally barred because it is untimely and because Tellez did not appeal the judgment of conviction and obtain the certificate of probable cause to attack the validity of the guilty plea required by Penal Code section 1237.5.<sup>2</sup> The Secretary further responds that, based on this court's recent decision that counsel had no duty to advise the defendant of the potential SVPA consequences of pleading guilty to felony indecent exposure (*People v. Codinha* (2021) 71 Cal.App.5th 1047 (*Codinha*)) and based on the lack of any independent objective corroborating evidence supporting Tellez's claim he would not have pled guilty had counsel advised

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<sup>1</sup> The petition also included claims that counsel was ineffective for failing to conduct any pretrial investigation, failing to communicate with Tellez, and failing to obtain a psychological evaluation that allegedly would have shown he lacked criminal intent when he committed the lewd and lascivious act to which he pled guilty. We rejected those claims in our initial order summarily denying the petition. In vacating our order and directing us to issue an order to show cause, the Supreme Court of California limited the order to show cause to the claim that counsel was ineffective for failing to advise Tellez that an SVPA commitment was a potential consequence of his guilty plea. We therefore limit our discussion to that claim and again summarily deny Tellez's other claims. (See *In re Price* (2011) 51 Cal.4th 547, 549 [by limiting order to show cause to single claim, Supreme Court implicitly determined petitioner failed to state prima facie case on other claims]; *People v. Duvall* (1995) 9 Cal.4th 464, 475 [court will summarily deny habeas corpus petition if no prima facie case is stated].)

<sup>2</sup> Penal Code section 1237.5 requires a defendant who wants to attack the validity of a guilty plea to obtain from the trial court a certificate of probable cause for the appeal. "A defendant who challenges the validity of such a plea on the ground that trial counsel rendered ineffective assistance in advice regarding the plea may not circumvent the requirements of section 1237.5 by seeking a writ of habeas corpus." (*In re Chavez* (2003) 30 Cal.4th 643, 651.)

him of those consequences, Tellez has not stated a prima facie case of ineffective assistance of counsel. The Secretary urges us to deny the petition.

In reply, Tellez argues his petition is not time-barred, because he did not unreasonably delay by seeking habeas corpus relief within 17 months of the appointment of current counsel. On the merits, he again argues that as consequences of guilty pleas, SVPA commitment and deportation are analogous; and since counsel must advise about potential deportation, counsel must also advise about potential SVPA commitment. Tellez “recognizes the weight of the laboring oar in urging the Court to re-examine its decision [in *Codinha*, *supra*, 71 Cal.App.5th 1047] in a slightly different context.” He suggests as bases for distinction that *Codinha* relied on the absence of a statutory duty to advise of SVPA consequences whereas he argues the duty “is Constitutionally enmeshed in the 6<sup>th</sup> Amendment,” and that in *Codinha* the prospect of an SVPA commitment “remained in the realm of ‘possibility’ as a consequence” whereas in his case it is “presently occurring.”

#### B. *Procedural Bars*

As noted, the Secretary raises two procedural bars to consideration of the merits of Tellez’s claim that counsel was ineffective for failing to advise him of potential SVPA commitment: untimeliness and noncompliance with Penal Code section 1237.5. We decline to consider these procedural bars. “Because the Supreme Court transferred the case to us specifically to address the substantive issue[ ] of whether [counsel was ineffective for failing to advise Tellez of the potential SVPA consequences of his guilty plea], and because the issuance of an order to show cause indicates the Supreme Court has determined the claim is not procedurally barred [citations], we address the merits only.” (*In re Smith* (2020) 49 Cal.App.5th 377, 386.)

### C. *Merits*

We now turn to whether Tellez has made out a claim of ineffective assistance of counsel entitling him to habeas corpus relief. The federal and state Constitutions guarantee a criminal defendant the right to effective assistance of counsel. (U.S. Const., 6th & 14th Amends.; Cal. Const., art. I, § 15; *Strickland v. Washington* (1984) 466 U.S. 668, 686 (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 215 (*Ledesma*)). A defendant challenging a conviction on the ground that counsel was ineffective generally must show “counsel’s performance was deficient” and “the deficient performance prejudiced the defense.” (*Strickland*, at p. 687; accord, *Ledesma*, at pp. 216-217.) In the context of a challenge to a conviction based on a guilty plea, the defendant must show “‘counsel’s representation fell below an objective standard of reasonableness’ ” and “there is a reasonable probability that, but for counsel’s errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial.” (*Hill v. Lockhart* (1985) 474 U.S. 52, 57, 59 (*Hill*); accord, *People v. DeJesus* (2019) 37 Cal.App.5th 1124, 1136 (*DeJesus*); *People v. Breslin* (2012) 205 Cal.App.4th 1409, 1420.) As we discuss below, Tellez has established neither deficient performance nor prejudice.

#### 1. *Deficient Performance*

The deficient performance of which Tellez complains is counsel’s failure to tell him before he pled guilty that after service of the prison term he could be involuntarily committed as a sexually violent predator for life. Tellez cites no directly on-point authority that counsel had a duty to advise him of that consequence. He instead compares SVPA commitment to deportation as a serious consequence of a guilty plea and relies mainly on *Padilla v. Kentucky* (2010) 559 U.S. 356 (*Padilla*), which held counsel performed deficiently by failing to advise a noncitizen that his plea of guilty to transportation of a

large amount of marijuana would make him subject to automatic deportation. Tellez acknowledges we found this comparison “inapt” in *Codinha, supra*, 71 Cal.App.5th at page 1065. We do so again in this case.

In *Padilla*, counsel advised the defendant to plead guilty and incorrectly advised him that he “ “did not have to worry about immigration status” ’ ” because he had been a lawful permanent resident of the United States for more than 40 years. (*Padilla, supra*, 559 U.S. at p. 359.) Because “the relevant immigration statute [was] succinct, clear, and explicit in defining the removal consequence for Padilla’s conviction” and “his deportation was presumptively mandatory,” the United States Supreme Court held that counsel had a duty to give correct advice and the failure to do so was constitutionally deficient performance. (*Id.* at pp. 368-369.) In holding that “counsel must inform her client whether his plea carries a risk of deportation,” the high court stated that its “longstanding Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less.” (*Padilla*, at p. 374.)

The Legislature codified the holding of *Padilla, supra*, 559 U.S. 356, in 2015 when it enacted a statute providing that “[d]efense counsel shall provide accurate and affirmative advice about the immigration consequences of a proposed disposition.” (Pen. Code, § 1016.3, subd. (a); see *id.*, § 1016.2, subd. (h) [stating legislative intent to codify *Padilla*]; *Codinha, supra*, 71 Cal.App.5th at p. 1065 & fns. 8 & 9 [discussing codification of *Padilla*].) As we explained in *Codinha*, however, “[t]here are no similar statutes or indications of a legislative intent that require defense counsel to advise their clients of the potential SVP[A] consequences of the clients’ guilty pleas.” (*Codinha*, at p. 1066.)



Tellez responds that “[his] argument is not that there is a statutory duty, but that the duty to advise of the consequences of a[n] SVP[A] commitment is Constitutionally enmeshed in the 6<sup>th</sup> Amendment.” He contends “[a]ny lawyer who represents the accused must have meaningful disclosures and conversations with their clients as to the most important part of the penalty they may face,” and relies on *Padilla* and another case (*People v. Soriano* (1987) 194 Cal.App.3d 1470 (*Soriano*)) in which the courts ruled counsel performed deficiently by failing to advise noncitizens of the deportation consequences of their guilty pleas. As we shall explain, we are not persuaded advisement of a potential SVPA commitment is constitutionally required.

In imposing a constitutional duty on defense counsel to warn a noncitizen defendant about deportation as a consequence of a guilty plea in *Padilla*, the United States Supreme Court noted that “as a matter of federal law, deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.” (*Padilla, supra*, 559 U.S. at p. 364, fn. omitted.) The high court went on to explain that because “deportation is a particularly severe ‘penalty’ ” that is “intimately related to the criminal process” and is “nearly an automatic result for a broad class of noncitizen offenders,” the court found it “‘most difficult’ to divorce the penalty from the conviction in the deportation context.” (*Id.* at pp. 365-366.) Citing standards promulgated by the American Bar Association and other organizations, the high court also stated, “The weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation.” (*Id.* at pp. 367-368.) The high court further noted “the terms of the relevant immigration statute [were] succinct, clear, and explicit in

defining the removal consequence for Padilla’s conviction.” (*Id.* at p. 368.)<sup>3</sup> The *Soriano* court similarly relied on American Bar Association standards and the close and clear connection between conviction and deportability in requiring counsel to advise the defendant of the deportation consequences of the guilty plea. (*Soriano, supra*, 194 Cal.App.3d at pp. 1479-1482.)

These factors do not support imposition of a duty on counsel to advise a client that civil commitment under the SVPA is a potential consequence of a guilty plea to certain sex crimes. “Unlike the potential immigration consequences for a noncitizen defendant convicted of certain crimes, potential SVP[A] consequences are neither ‘enmeshed’ in and ‘intimately related to the criminal process’ nor ‘nearly an automatic result’ for many offenses.” (*Codinha, supra*, 71 Cal.App.5th at p. 1069.) Rather, commitment under the SVPA requires an additional, multistep process. Prison officials first screen a person convicted of a qualifying sex crime to determine whether the person is likely a sexually violent predator. (Welf. & Inst. Code, § 6601, subd. (b).) If so, the person is referred for evaluation by two experts to determine whether the person has a mental disorder that makes the person likely to commit acts of sexual violence without appropriate treatment or confinement. (*Id.*, § 6601, subds. (d)-(f).) If the two experts agree, a request that a petition for civil commitment be filed is sent to the designated counsel of the county where the person committed the sex crime. (*Id.*, § 6601, subds. (d), (f), (h)(1), (i).) If the designated counsel agrees that commitment is appropriate,

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<sup>3</sup> “Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States or a foreign country relating to a controlled substance . . . , other than a single offense involving possession for one’s own use of 30 grams or less of marijuana, is deportable.” (8 U.S.C. § 1227(a)(2)(B)(i), quoted in *Padilla, supra*, 559 U.S. at p. 368.)

counsel then files a petition in the superior court. (*Id.*, § 6601, subd. (i).) If a petition is filed, the court holds a hearing to determine whether there is probable cause to believe the person is likely to engage in sexually violent behavior. (*Id.*, § 6602, subd. (a).) If the court finds probable cause, a trial is conducted on whether the person has a mental disorder that makes the person likely to engage in sexually violent acts upon release from prison. (*Ibid.*) The person has the right to a jury or court trial (*id.*, § 6603, subd. (a)), at which the trier of fact must find beyond a reasonable doubt that the person is a sexually violent predator in order to commit the person (*id.*, § 6604). Hence, a finding that Tellez is a sexually violent predator subject to civil commitment “would result only from new determinations years [after his plea] of issues such as whether [he] was *at that point* mentally disordered and likely to reoffend [citations]—matters which [were] not admitted by his plea.” (*People v. Moore* (1998) 69 Cal.App.4th 626, 632; accord, *Codinha*, at pp. 1067-1068.) Unlike the deportation consequence at issue in *Padilla*, an SVPA commitment is neither a “presumptively mandatory” consequence of a guilty plea nor “nearly an automatic result” of applying a “succinct, clear, and explicit” statute to the plea. (*Padilla, supra*, 559 U.S. at pp. 366, 368, 369.)

It also does not appear “[t]he weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of [SVPA commitment].” (*Padilla, supra*, 559 U.S. at p. 367.) Tellez has cited no professional guidelines or other similar sources supporting imposition of such a duty, even though it is his burden to show “counsel’s representation fell below an objective standard of reasonableness.” (*Strickland, supra*, 466 U.S. at p. 688; accord, *In re Hernandez* (2019) 33 Cal.App.5th 530, 543.) Our own independent research found no clear direction from professional organizations on the subject. A guideline from the National Legal Aid and

Defender Association states that “counsel should be fully aware of, and make sure the client is fully aware of . . . other consequences of conviction such as deportation, and civil disabilities.” (NLADA, Performance Guidelines for Criminal Defense Representation (4th ed. 2006) Guideline 6.2(a)(3).) Deportation is specifically mentioned, but civil commitment as a sexually violent predator is not. A guideline from the American Bar Association states: “To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.” (ABA Stds. for Crim. Justice (3d ed. 1999) std. 14-3.2(f), p. 116.) The associated commentary asserts defense counsel should be aware of the collateral consequences of sex crime convictions, because they are likely to carry “serious and wide-ranging collateral consequences.” (*Id.*, com. to std. 14-3.2(f), p. 127.) The commentary urges counsel to “be familiar with, and advise defendants of, all of the possible effects of conviction,” but acknowledges that courts do not require “an expansive debriefing” on “every likely effect of a plea in all circumstances.” (*Id.*, com. to std. 14-3.2(f), p. 126.) Instead, the commentary states, “[c]ourts generally distinguish between the ‘direct’ and ‘collateral’ consequences of a plea of guilty, holding that while the defendant must receive advice regarding the former, counsel’s and the court’s failure to consult with the defendant regarding the latter will not invalidate a plea.” (*Id.*, com. to std. 14-3.2(f), p. 126, fn. 25.) Noting the lack of statutes or case law that might establish prevailing professional norms (*Codinha, supra*, 71 Cal.App.5th at p. 1068) and mindful that “we must be especially careful about recognizing new grounds for attacking the validity of guilty pleas” (*Padilla*, at p. 372; see *Codinha*, at p. 1069), in *Codinha* we adhered to the established distinction between direct and collateral consequences of guilty

pleas to conclude that “[f]ailure of defense counsel to advise the defendant of even the serious consequences associated with civil commitment proceedings is not a basis on which to set aside a guilty plea” (*Codinha*, at p. 1069).<sup>4</sup>

We adhere to our conclusion in this case and note that in doing so we agree with the majority of courts in other jurisdictions that have ruled on the matter. For example, the Missouri Court of Appeals repeatedly has held defense counsel has no duty to advise the defendant of the possibility of an SVPA commitment, because it is a collateral consequence of a guilty plea. (*Carter v. State* (Mo.Ct.App. 2007) 215 S.W.3d 206, 210-211; *Harris v. State* (Mo.Ct.App. 2006) 204 S.W.3d 371, 374-375; *Morales v. State* (Mo.Ct.App. 2003) 104 S.W.3d 432, 435-437.) Earlier this year, the same court noted that unlike deportation, civil commitment under the SVPA “is not ‘uniquely difficult’ to classify as direct or collateral” and is not “a ‘presumptively mandatory’ consequence” of a sex crime conviction, and therefore “[t]he well-established principle that plea counsel is not ineffective for failing to inform a defendant of the collateral consequences of a guilty plea is unaffected by *Padilla*.” (*Fields v. State* (Mo.Ct.App. 2022) 642 S.W.3d 774, 778, 779.) The Supreme Court of Wisconsin similarly “rel[ied] on the many factors that differentiate the possibility of [an SVPA] commitment from the unique consequence of deportation,” including that commitment is not an automatic result of the guilty plea and serves a rehabilitative rather than a punitive

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<sup>4</sup> The United States Supreme Court did not have to consider “[w]hether that distinction [was] appropriate” in *Padilla* “because of the unique nature of deportation.” (*Padilla*, *supra*, 559 U.S. at p. 365.) “Even in *Padilla* [the court] did not eschew the direct-collateral divide across the board. [Citation.] Rather, [the court] relied on the special ‘nature of deportation’—the severity of the penalty and the ‘automatic’ way it follows from conviction—to show that ‘[t]he collateral versus direct distinction [was] ill-suited’ to dispose of *Padilla*’s claim.” (*Chaidez v. United States* (2013) 568 U.S. 342, 355.)

purpose, to conclude that the “Sixth Amendment does not require defense counsel to inform a client about the possibility of civil commitment.” (*State v. LeMere* (Wis. 2016) 879 N.W.2d 580, 598-599.) Other courts have reached the same conclusion for the same or similar reasons. (See, e.g., *Kim v. Director, Va. Dept. of Corrections* (E.D.Va. 2015) 103 F.Supp.3d 749, 755-758; *Watrous v. State* (Fla.Dist.Ct.App. 2001) 793 So.2d 6, 8-11; *Gully v. State* (Iowa Ct.App. 2002) 658 N.W.2d 114, 121; *Hamm v. State* (S.C. 2013) 744 S.E.2d 503, 504-505; *Thomas v. State* (Tex.Ct.App. 2012) 365 S.W.3d 537, 542-544; see also *State v. Schaefer* (Kan. 2016) 385 P.3d 918, 927 [holding counsel was not ineffective for failing to advise defendant who pled guilty of potential SVPA commitment when it was “no more than a remote possibility,” but stating that on other facts probability of commitment may be high enough to impose duty].)<sup>5</sup> These cases support our conclusion in *Codinha* that the failure of counsel to advise the defendant of the potential SVPA consequences

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<sup>5</sup> The highest court of at least one state has held that “defense counsel has a minimal duty to advise a defendant who pleads guilty to a triggering offense subject to the provision of the Sexually Violent Persons Commitment Act that he will be evaluated for and may risk involuntary commitment after completing his prison term.” (*People v. Hughes* (Ill. 2012) 983 N.E.2d 439, 457.) In imposing that duty, the court reasoned that “where the consequence is severe, certain, and sufficiently enmeshed in the criminal process the sixth amendment right to counsel may give rise to a basis for withdrawing a plea.” (*Id.* at p. 456.) We agree an SVPA commitment may be a “severe” consequence of pleading guilty to a qualifying sex crime, but as explained in the text, we disagree it is “certain” or “sufficiently enmeshed in the criminal process” such that it supports imposition of a constitutional duty on counsel to advise the defendant of the potential consequence before pleading guilty. (See *Codinha, supra*, 71 Cal.App.5th at p. 1069 [“potential SVP[A] consequences are neither ‘enmeshed’ in and ‘intimately related to the criminal process’ nor ‘nearly an automatic result’ for many offenses”]; *State v. LeMere, supra*, 879 N.W.2d at pp. 597-598 [disagreeing with *Hughes*].)



of his guilty plea did not violate prevailing professional norms. (*Codinha, supra*, 71 Cal.App.5th at pp. 1068-1069.)

Tellez nevertheless urges us to re-examine our decision in *Codinha, supra*, 71 Cal.App.5th 1047, in what he calls “a slightly different context.” He asserts that in *Codinha* “the prospect of a[n] SVP[A] commitment remained in the realm of ‘possibility’ as a consequence,” because the defendant had not yet served his prison term, but in this case he has been released from prison and “faces the very real prospect of a lifetime in a State hospital” based on the pending SVPA commitment proceeding against him. This difference between the two cases does not affect our decision here. “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective *at the time*.” (*Strickland, supra*, 466 U.S. at p. 689, italics added.) “Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, *viewed as of the time of counsel’s conduct*.” (*Id.* at p. 690, italics added; accord, *Ledesma, supra*, 43 Cal.3d at p. 216 [court must “assess the reasonableness of counsel’s acts or omissions . . . under the circumstances as they stood at the time that counsel acted or failed to act”].) As was the situation in *Codinha*, when counsel here failed to advise the client that if he pled guilty he could be committed under the SVPA after he served his prison term, any such commitment would occur, if at all, years in the future and was far from certain. Moreover, as we have discussed, the professional norms prevailing at the time of the plea did not clearly require counsel to give such advice and still do not do so. The fact that Tellez *now* faces an SVPA commitment

proceeding therefore does not mean counsel performed deficiently by failing to advise him of that potential consequence *when he pled guilty*.

## 2. *Prejudice*

We turn finally to the prejudice prong of Tellez’s claim of ineffective assistance of counsel. Tellez bears the burden to show that had counsel advised him of the potential SVPA commitment consequence before he pled guilty, he would not have done so and instead would have proceeded to trial. (*Hill, supra*, 474 U.S. at p. 59; *DeJesus, supra*, 37 Cal.App.5th at p. 1136.) The only evidence Tellez offered concerning prejudice is his own declaration, in which he stated: “Had my attorney told me about the possibility of lifetime incarceration as a sexually violent predator because of my guilty plea, I would not have pled guilty.” Such a self-serving “allegation that trial counsel failed to properly advise a defendant is meaningless unless there is objective corroborating evidence supporting [the] claimed failures.” (*People v. Cruz-Lopez* (2018) 27 Cal.App.5th 212, 223-224.) “Our Supreme Court has stated that a defendant’s claim that ‘he would not have pled guilty if given competent advice “must be corroborated independently by objective evidence.” ’” (*People v. Abdelsalam* (2022) 73 Cal.App.5th 654, 664; see *People v. Vivar* (2021) 11 Cal.5th 510, 530; *In re Resendiz* (2001) 25 Cal.4th 230, 253 (lead opn. of Werdegarr, J.); *In re Alvernaz* (1992) 2 Cal.4th 924, 938.) “A contrary holding would lead to an unchecked flow of easily fabricated claims.” (*Alvernaz*, at p. 938.) Tellez “offered no contemporaneous evidence such as an affidavit and/or testimony by trial counsel, or counsel’s files, notes, or . . . correspondence.” (*Abdelsalam*, at p. 664.) We “‘may reject an assertion that is not supported by an explanation or other corroborating circumstances.’” (*Ibid.*)



III.  
DISPOSITION

The petition is denied.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

HUFFMAN, J.



10/18/2022

KEVIN J. LANE, CLERK

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San Diego County Office of the Alternate Public Defender

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