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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 In re the matter of

No. BB943863

14 **BULOS ZUMOT,**

DISTRICT ATTORNEY'S REQUEST
TO STRIKE NEW CLAIMS RAISED IN
PETITIONER'S TRAVERSE

15
16 On habeas corpus.

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19 **INTRODUCTION**

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21 The proper procedure for litigation of issues raised by way of a petition for writ of
22 habeas corpus is well-settled:

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26 DISTRICT ATTORNEY'S REQUEST TO STRIKE NEW CLAIMS RAISED IN PETITIONER'S TRAVERSE

1 The order to show cause ... directs the respondent to address the “claims raised
2 in the petition and the factual bases for those claims alleged in the petition.”
3 (*People v. Duvall*, [(1995)] 9 Cal.4th [464,] at p. 475, 37 Cal.Rptr.2d 259, 886
4 P.2d 1252.) “It directs the respondent to address only those issues.” (*Ibid.*) The
5 respondent addresses the issues in a pleading called the return. The return must “
6 ‘allege facts¹ tending to establish the legality of petitioner's detention.’ ” (*Id.* at
7 p. 476, 37 Cal.Rptr.2d 259, 886 P.2d 1252.) “The factual allegations must also
8 respond to the allegations of the petition that form the basis of the petitioner's
9 claim that the confinement is unlawful. [Citations.]” (*Ibid.*)...

7 After the return is filed, the petitioner replies in a pleading called a traverse, in
8 which the petitioner must indicate whether the factual allegations in the return
9 are admitted or disputed. (*People v. Duvall, supra*, 9 Cal.4th at pp. 476–477, 37
10 Cal.Rptr.2d 259, 886 P.2d 1252; § 1484.) ...

10 Thus, it is the parties' pleadings that define the issues. In the words of our
11 Supreme Court, “it is through the return and the traverse that the issues are
12 joined in a habeas corpus proceeding.” (*People v. Romero*, [(1994)] 8 Cal.4th
13 [728,] at p. 739, 35 Cal.Rptr.2d 270, 883 P.2d 388.) “This process of defining
14 the issues is important because issues not raised in the pleadings need not be
15 addressed. [Citation.]” (*People v. Duvall, supra*, 9 Cal.4th at p. 478, 37
16 Cal.Rptr.2d 259, 886 P.2d 1252.) Under this process, the issues to be addressed
17 may not extend beyond the claims alleged in the habeas corpus petition. Thus,
18 respondent may not raise additional issues in its return. (*People v. Green* (1980)
19 27 Cal.3d 1, 43, fn. 28, 164 Cal.Rptr. 1, 609 P.2d 468, overruled on other
20 grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3, 226 Cal.Rptr. 112,
21 718 P.2d 99.)(Emphasis added.)

17 Similarly, ***a habeas corpus petitioner may not raise additional issues in the***
18 ***traverse.*** “While the traverse may allege additional facts in support of the claim
19 on which an order to show cause has issued, attempts to introduce additional
20 claims or wholly different factual bases for those claims in a traverse do not
21 expand the scope of the proceeding which is limited to the claims which the
22 court initially determined stated a prima facie case for relief.” (*In re Clark*,
23 [(1993)] 5 Cal.4th [750,] at p. 781, fn. 16, 21 Cal.Rptr.2d 509, 855 P.2d 729;
24 see also *In re Connor* (1940) 16 Cal.2d 701, 711, 108 P.2d 10.) ***To bring***
25 ***additional claims before the court, petitioner must obtain leave to file a***
26

24 ¹ Emphasis in original.

1 *supplemental petition for writ of habeas corpus.* (*People v. Green, supra*, 27
2 Cal.3d at p. 43, fn. 28, 164 Cal.Rptr. 1, 609 P.2d 468.)(Emphasis added.)

3
4 (*Board of Prison Terms v. Superior Court* (2005) 130 Cal.App.4th 1212, 1234-35.)

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6 Despite these well-settled rules and procedures, Petitioner has submitted his “Traverse
7 to Return to Petition for Writ of Habeas Corpus” and, in doing so, has improperly attempted to
8 insert new claims, labeled as “new factual allegations,” that were not raised in the original
9 petition or considered by the appellate court in its issuance of the Order to Show Cause.

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11 This is Petitioner’s second attempt to raise these new claims before this Court in an
12 improper manner. In June of 2014, Petitioner filed a motion in which he alleged “possible
13 prosecutorial misconduct” and requested an evidentiary hearing to further explore his
14 allegations. On July 22, 2014, this Court noted that it did not have jurisdiction to consider the
15 new claims and ordered Petitioner’s motion off calendar. At that time, Respondent argued that
16 if Petitioner wished to raise new claims, the proper vehicle by which to do so would be the
17 filing of an amended petition. Now, almost a year later, Petitioner has still not filed an
18 amended petition, and has, instead, attempted to “piggy back” the new claims on to the original
19 petition by including them in his traverse and asking the Court to order the People to respond.
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22 Just as his previous attempt to do an “end run” around the proper pleading process
23 failed, Respondent again asks this court to order those portions of the traverse, the supporting
24 points and authorities and exhibits related to the new claims be stricken. Additionally, since

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1 Petitioner has been aware of the basis for the new claims since May of 2014 and was expressly
2 advised of the proper procedure for raising new claims in July 2014, Respondent submits that
3 his current efforts to raise those claims are untimely and should be rejected on that basis as
4 well.
5

6 **I.**
7

8 **A HABEAS PETITIONER IS PROCEDURALLY BARRED FROM RAISING**
9 **NEW CLAIMS IN THE TRAVERSE**

10 *When an order to show cause does issue, it is limited to the claims raised in the*
11 *petition and the factual bases for those claims alleged in the petition.* It directs the
12 respondent to address only those issues. While the traverse may allege additional facts
13 in support of the claim on which an order to show cause has issued, *attempts to*
14 *introduce additional claims or wholly different factual bases for those claims in a*
15 *traverse do not expand the scope of the proceeding which is limited to the claims*
16 *which the court initially determined stated a prima facie case for relief.”* (Italics
17 added; see *People v. Duvall, supra*, 9 Cal.4th at p. 478, 37 Cal.Rptr.2d 259, 886 P.2d
18 1252 [quoting italicized passage with approval]; *Board of Prison Terms v. Superior*
19 *Court* (2005) 130 Cal.App.4th 1212, 1235, 31 Cal.Rptr.3d 70 [same]; emphasis added.)

20 (*In re Reno* (2012) 55 Cal.4th 428, fn 15.)

21 Since the petitioner is precluded from raising new issues in the traverse, the proper
22 vehicle for pursuing claims not raised in the original petition is to obtain leave to file a
23 supplemental petition for writ of habeas corpus. Just as in July of 2014, Petitioner has failed to
24 do so. His attempts to circumvent the proper pleading process should again be rejected by this
25 Court.
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DISTRICT ATTORNEY’S REQUEST TO STRIKE NEW CLAIMS RAISED IN PETITIONER’S TRAVERSE

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II.

PETITIONER'S ATTEMPT TO RAISE NEW CLAIMS IN THE TRAVERSE IS ALSO UNTIMELY

It has long been required that a petitioner explain and justify any significant delay in seeking habeas corpus relief. “[I]t is the practice of this court to require that one who belatedly presents a collateral attack such as this explain the delay in raising the question.” (*In re Swain* (1949) 34 Cal.2d 300, 302; *In re Clark* (1993) 5 Cal.4th 750, 765.) Unjustified delay in presenting habeas claims bars consideration of the merits of a petition. (*In re Clark. supra*, 5 Cal.4th at 759; *In re Stankewitz* (1985) 40 Cal.3d 391, 396, fn. 1.)

Here, Petitioner has been aware of the basis for his new claims since May of 2014. He attempted to improperly introduce and litigate those claims in an unauthorized motion in July 2014, an attempt which was rejected by this Court. At that time, Respondent’s brief explicitly outlined the case law which clearly explained that if he wished to pursue the new claims, he would need to file an amended or supplemental petition for writ of habeas corpus as required by law.

Instead of making any effort to file an amended petition, Petitioner has simply inserted his new claims into his traverse, a practice which is explicitly prohibited. In doing so, he offers no explanation for failing to file an amended petition or otherwise properly raise the new claims in a timely manner.

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CONCLUSION

In the context of the current habeas proceedings, if Petitioner wishes to seek a court's consideration of his new claims, he may, with leave of the court, file a supplemental or amended habeas petition in which he properly raises the new allegations. (*In re Clark* (1993) 5 Cal.4th 750.) If he chooses to do so, and the court issues a new OSC that encompasses the new issues, Respondent would then be required to respond to the new allegations in a return that addresses the issues raised in both the original and amended petitions. Respondent would also be entitled to an additional 30 days from the issuance of the OSC to do so. (Cal. Rules of Ct., 4.551(d).) Petitioner should not be allowed to circumvent these well-settled pleading requirements and briefing schedules by including his new claims in his traverse and asking this Court to order the respondent to reply (Traverse, p. 36.).

Therefore, Respondent respectfully requests that the allegations contained in item V of the Traverse (pp. 31-36), the Points and Authorities (pp. 23-25, p. 26, footnote 8), Exhibit C and Exhibit G (# 6-9) be stricken from the traverse.

Dated: 4/15/15

Respectfully submitted,

JEFFREY F. ROSEN,
District Attorney

By: Kaci R. Lopez
KACI R. LOPEZ
Supervising Deputy District Attorney

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1
2 Case Name: *In re the matter of BULOS ZUMOT on habeas corpus*
3 Case Number: BB943863

4 **PROOF OF SERVICE**

5 I am a citizen of the United States, employed in the County of Santa Clara, State of California. I
6 am over the age of 18 years and not a party to the above-entitled action. My business address is:
Office of the District Attorney, 70 W. Hedding Street, West Wing, San Jose, California 95110.

7 On **June 5, 2015**, I served the following document(s) upon the interested parties herein by the
8 method(s) indicated below:

9 **DISTRICT ATTORNEY'S REQUEST TO STRIKE NEW CLAIMS RAISED IN**
10 **PETITIONER'S TRAVERSE**

11 X **BY FIRST CLASS MAIL:** by placing a true copy thereof, enclosed in a sealed envelope,
12 for postage and deposit with the U.S. Postal Service on the same date it is submitted for mailing,
and addressed as follows:

13 ED SWANSON
14 SWANSON & McNAMARA LLP
15 300 Montgomery Street, Suite 1100
San Francisco, CA 94104

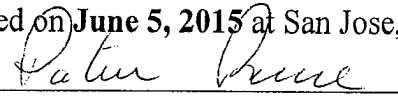
CLIFF GARDNER
LAZULI WHITT
1448 San Pablo Avenue
Berkeley, CA 94702

16 ___ **BY PERSONAL DELIVERY:** by causing a true copy thereof to be hand-carried to the
17 recipient at the address indicated:

18 ___ **BY ELECTRONIC MAIL:** by emailing a true copy thereof to the recipient at the e-mail
19 address indicated:

20 ___ **BY COUNTY PONY MAIL:** by placing a true copy thereof, enclosed in a sealed envelope,
21 addressed as follows:

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct, and that this declaration was executed on **June 5, 2015** at San Jose, California.

24 
Patricia Ponce

25 *In re Bulos Zumot on Habeas Corpus – BB943863*
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