

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alexander Jacome — PETITIONER
(Your Name)

vs.

The State of California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

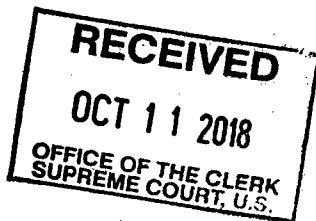
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QUESTION(S) PRESENTED

Will this Court reverse the lower Courts substantial violations of the Fourteenth Amendment's
substantiave Due Process clause, or allow the unprecedeted continuing violations of the First, Ninth and
Fourteenth Amendments of the United States Constitutuion to continue?

Are these conditions of parole invalid?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Fourth Appellate District, Appeals court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was Jul. 11, 2018. A copy of that decision appears at Appendix A .

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following statuatory and constitutional provisions are involved in this case.

U.S. CONST. AMEND. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free excersice thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of greivances.

U.S. CONST. AMEND. IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparge others retained by the people.

U.S. CONST. AMEND. XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No sttae shall make or enforce any law which shall abridge the priveiliges or immunitiess of citizens of the United States;nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be appointed among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State,being twenty-one-years of age, and citizens of the United States , or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATEMENT OF THE CASE

Petitioner is Mr. Alexander Jacome who is a 32 year old Hispanic male committed from San Diego County. His qualifying offense is a violation of California Penal Code § 243.3(01) battery Against Public Transit Employee or Passenger. The offense occurred on 7/21/16. Petitioner was convicted on 4/13/2017 and sentenced to a 2 year prison term. He entered into CCR on 5/25/2017.

He did not admit any other misconduct and none was proven. In fact, in all pertinent cases, guilt was disproven. It would be improper, unfair, and unreasonable to impose special conditions of parole for alleged misconduct unproven by any standard, especially where Jacome has not had the chance to tell his side of the story. Were he able to do so, it would quickly be shown he has engaged in no misconduct other than what he plead to or was convicted of.

Of the over 100 conditions of parole, most appear to be based on conduct alleged but never proven in any reasonable way. Most of the conditions and some of the alleged reasons for the conditions should be stricken. They have no relation to a crime Jacome was convicted of, do not relate to conduct reasonably related to future criminality, and they are overbroad, vague, unreasonable, and difficult if not impossible to interpret in any objective way to follow. Jacome has no idea what he can and can't do.

Although Jacome was charged with many crimes (nothing to be proud of) the vast majority were dismissed. For example, in case no. M212027CA Jacome was charged with battery, cruelty to a child and inflicting injury (2 counts), and petty theft. At trial, all charges except petty theft were dismissed based on the testimony of the alleged victims. So, even though it appeared that Jacome had engaged in great misconduct, when the truth came out it amounted to very little. (see: minutes from 4/7/16, case no. M212027CA, submitted herewith). This is a typical example where based on the truth, Jacome engaged only in minor misdemeanors.

The only crimes Jacome has pled to or been convicted of are:

- (1) Petty theft. Case no. M212027CA, CN2011952, and C343880.
- (2) Reckless driving. Case no. S199249
- (3) Failure to disclose origin of recording work. Case no. CD212845
- (4) Selling under 100 counterfeit movies. Case no. CD222386.
- (5) Possession of drug paraphenilia. Case no. M191443.
- (6) Disturbance by loud noise. Case no. 280742
- (7) Indecent exposure. Case no. M205846
- (8) Grand theft. Case no. SCS284294
- (9) Failure to registure as a sex offender. Case no. M220874SC
- (10) Exhibition of a weapon. Case no. SCS288770.

All the above are misdemeanors not the proper subject of parole but instead only probation.

The only felonies for which parole is properly granted are:

- (1) Assault on transportation personell. Case no.. SD269691
- (2) Vandalism over \$400. Case no. SD25266.

To say Jacome's parole conditions are not related to felonious crimes would be a gross understatement.

"Careful scrutiny" of parole conditions is warranted. (United States v. Pastore, 537 F.2d 675,681 (2nd Cir. 1976).

The special conditions of parole and reasons therefore submitted herewith as an appendix.

Petitioners special conditions entitled "computer use and electronic media", conditions numbers 84, 85, 86, 87, 88, 89, 90, 91, and 92 are invalid because they have no relation to any crime committed by Jacome, requires/forbids conduct that is not reasonably related to future criminality, and are excessively broad, vague, and oppressive, and cannot even be understood so that Jacome knows how to govern his behavior.

They appear to target sexual activity. Main stream media is full of sexual illustrations and the condition appears to prohibit contact with that. For example, Jacome could violate his parole just by going to an "R" rated movie, or even watching a "P.G" rated television show or movie. Even t.v. commercials are often made to be "sexy". These conditions are far too broad.

Special condition number 104 states in essence that Jacome provide parole with the names, ages, phone number and address of all persons he visits and desires to visit and the parole agent will conduct an investigation to determine if the location is appropriate for him to visit. This condition is clearly invalid and violates the law as will be shown further in this petition. If nothing else, it violates his constitutional right to free association.

Reason Code "3" of the special conditions appears to come from the information proven false in case number M212027CA. The allegations of the complaint were false and the related charges dismissed. This reason code must be eliminated. Jacome never engaged in reaching into a parked vehicle to touch a child on the cheek or attempted to pull anyone out of a vehicle.

Therefore, once reason code "3" is eliminated the special conditions related thereto must also be. Special conditions 14, 17, 18, 19, 20, 21, 22, 35, 40, 41, 50, 86, 87, et. seq must be invalidated as well.

Reason code "9" is improper and so are its related conditions. They clearly have no relationship to any crime or possible misconduct, relates to conduct not reasonably related to future criminality, and are overbroad, vague, and ambiguous. Some of these reason code "9" conditions apparently again relate to sexual misconduct. The truth is that Jacome got extremely high on drugs and for a very brief period of time exposed himself. This beh-

avior was very bizarre for him and out of character and was only drug induced. The only proper conditions for this would be that Jacome not take illegal drugs, engage in a drug rehab program, and not expose himself again. As discussed in the latter part of this petition reason code "9" does not specify any specific conduct and is invalid. That code "9" and all the associated conditions, condition numbers 28, 30, 33, 34, 36, 43, 52, 53, 54, 55, and 101 must be stricken.

As to condition "3", no alcohol, Jacome asked the court to modify the same condition in case number SOD252566 and it was changed. Jacome was permitted to consume alcohol and it should remain so.

Reason Code "13" again appears to relate to Jacome's alleged sexual misconduct. As set forth above, ~~and~~ there was only one brief incident of exposure. Conditions of parole need to be very narrowly drawn to match a specific behavior. All conditions related to reason code "13" are overbroad, vague, and grossly unreasonable.

The special conditions under the title "Possessions" are invalid. They do not satisfy the three prong test mentioned above and addressed in the next parts of this petition. Thus, conditions 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55, must be eliminated.

In sum, the following conditions are invalid and should be eliminated: 7, 8, 9, 11, 12, 13, 14, 17, 18, 19, 20, 21, 33, 35, 36, 37, 40, 41, 43, 46, 47, 48, 49, 50, 52, 53, 54, 55, 66, 71, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 98, 99, and 100 do not meet the three prong test, are overbroad and totally unreasonable.

At a minimum, conditions 2, 24, and 67 must be modified to be very narrow and specific.

Reason code 3, 9, and 13 and their related conditions must be eliminated.

POINTS AND AUTHORITIES

Although the discretion of the court imposing conditions of parole/probation is wide, it's powers are not boundless. In re Peeler, 266 C.A.2d 438, People v Williams, 247 C.A.2d 394.

Penal Code §1203.1 limits the trial courts discretion. People v. Dominguez, 256 C.A.2d 623.

"A condition which (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality does not serve the statutory ends of probation and is invalid."

Dominguez, *id.*

In this case, parole has virtually "banished" Jacome from doing practically anything on his own. To say he is being ostracized would be an understatement.

The case of In re White, 97 C.A.3d 141 (1979) is on point. In White, on a charge of ~~soliciting~~ an act of prostitution, the defendant was prohibited from going into certain map areas of Fresno and this was struck down as

being unnecessarily broad. The court stated:

"The statute [Penal Code], all case law demand and authorize only "reasonable conditions" not just conditions "reasonably related" to the crime committed".

There is a constitutional right to intrastate travel. U.S.C. Const. art.4, §2,cl.1;Amends. 5, 9, 14, Const. art.1 §7(a).

Careful scrutiny of severe conditions of probation/parole is warranted. U.S v Pastore, 537 F.2d 675,681 (2nd Cir. 1976). In this case, beside intrastate travel, other constitutional rights would be violated including due process, to be free from cruel and unusual punishment, and others. As the White court said:

"Where a condition of probation requires a waiver of precious constitutional rights, the condition must be narrowly drawn; to the extent it is overbroad it is not reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights".
White, supra., citing People v. Mason, 5 Cal.3d 759,768 (1971).

In this case, the conditions and reasons for them are far broader and restrictive than in Dominguez and White and violate many constitutional rights.

Jacome is tempted to go through each of the conditions and reason codes that are on their face grossly overbroad and unreasonable. However, that is probably not necessary. The conditions are so blatantly and grossly overbroad and unreasonable, and do not meet the three prong test that must be applied, Jacome is confident the court will go through them one by one and strike most of them. In fact, the standard conditions usually imposed such as that Jacome violate no laws, attend drug rehabilitation programs, and similar ones should be more adequate.

REASONS FOR GRANTING THE PETITION

Here will be the question of validity or reasonableness of conditions. Careful scrutiny of unusual and severe parole conditions is appropriate. The conditions as written deprives Jacome of more liberty than is reasonably necessary. Thus, denying petitioner the right of freedom of intimate association, protected under the substantive Due Process Clause of the Fourteenth Amendment.

Because the special conditions incorporate this statutory definition of "sexually explicit conduct", it prevents Jacome from possessing or viewing any materials depicting real or simulated sexual acts or "lascivious" full or partial nudity, and from going places where he knows such materials are available. Such places might include movie theaters, book stores, libraries, theatres, and large retailers and grocery stores that sell magazines or R-rated movies. The conditions appropriately prevents Jacome from entering strip clubs and x-rated video stores, but also prevents him from setting foot inside his local Wal-Mart, a library that loans R-rated movies, or a movie theatre showing a R-rated film with a simulated sex scene (even if Jacome enters the theater to see a different film.)

The average person will likely have actual knowledge that most places selling or renting DVD's, books, magazines, etc.-including local libraries- will stock materials containing depictions of adult sexual acts or lascivious displays of nudity. The breadth of the conditions pose a problem both for parole officers, who must decide what constitutes a violation (revocation), and for Jacome, who should not be left guessing where he permissibly may go, view, do etc.

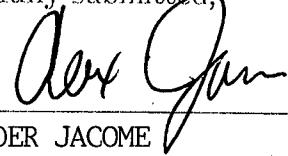
Images of adulst sexual activity are ubiquitous in advertisements and a variety of mainstream media, Jacome could easily violate, revoke parole, it by simply carrying on everyday activities like shopping, seeing a mainstream movie, reading a mainstream magazine, or watching television or being in a public or around ordinary citizens who engage in normal social activities and entertainment activities such as these.

Also addressing the conditions that Jacome cannot enter a health club or "gym", engage in any private relationship or phone calls obtaining any certain kinds of highly personal relationships and or sexual relationships or even using any dating website or social media. All conditions mentioned above are unduly harsh and oppressive.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



ALEXANDER JACOME

Date: 10-2-18