

NO. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE STEVE GILBERT HERNANDEZ, PETITIONER

ON PETITION FOR WRIT OF HABEAS CORPUS

EXTRAORDINARY WRIT

STEVE GILBERT HERNANDEZ, PRO PER  
PRISONER NO.: G46924  
Correctional Training Facility  
P.O. BOX 689  
SOLEDAD, CALIFORNIA 93960

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

SEP 11 2018

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Steven G. Hernandez — PETITIONER  
(Your Name)

vs.

Craig Koenig Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NONE OF THE LOWER COURTS FEDERAL OR STATE  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

**PETITION FOR WRIT OF CERTIORARI**

Steven G. Hernandez

(Your Name)

P. O. BOX 689

(Address)

SOLEDAD CA. 93960

(City, State, Zip Code)

(Phone Number)

## QUESTION(S) PRESENTED

(A) WHAT IS CONSTITUTIONAL VIOLATION OF INEFFECTIVE ASSISTANCE OF COUNSEL WHEN:

1. Trial counsel Quintino did not Investigate and Properly examine the FRANCO case: Trial attorney did not interview, or call as witnesses petitioner's parents for impeachment purposes of Detective Medici's testimony insuating petitioner had a gun.
2. Trial counsel should have sent an Investigator to examine Franco's vehicle. Franco had limoousine tinted windows. Franco's vision looking through a rearview mirror at petitioner would have been impaired, on a completely dark street.
- 3.(a) Defense counsel should have investigated and interviewed Officer Meyer. The first responding police officer and Secured the Officer's notes he made after interviewing Franco and inspecting her car.  
(b) Defense Counsel does not call Officer Braun the first responding officer in the Mendez case to impeach Carla Valencia's testimony. Key witness for the Burglary.
4. Should defense counsel request a pre-trial hearing for the Suppression of the alleged bullet(projectile) when the evidence is tampered with, also for Chain of Custody and Authentication purposes. (B) When trial counsel should object to evidence.
- 5 & 6. Defense Counsel should have investigated all witnesses for their Criminal record[s] for Impeachment and Moral Turpitude purposes.

7. When penalty attorney Mr. Wright chose to remain quit during petitioner's new trial motion/Romero motion/Sentencing.

8. When should trial attorney move for dismissal before Trial on all counts

(B) What is a Constitutional violation, when the District Attorney did not honor, whether innocently or knowingly, Failed to provide BRADY MATERIAL to the defense when discovery requested:

1. Oscar Galeana's criminal record, He tampered with Evidence and the alleged crime scene(alleged bullet.).

2.(a) All information pertaining to ERNIE, so defendant could have defended himself...

(b) And when prosecutor fails to provide basic information on alleged victim, what is Constitutionally not enough evidence to uphold verdict/conviction.(Ernie)

3.(a) When the prosecutor did not give to the defense the Statements of witness[es] Carla, Her testimony at trial is no where in the evidence.(Her testimony places petitioner inside the residence):

(B) What is perjury concerning Carla's testimony.

What is Ineffective Assistance of Appellate Counsel

4. When Counsel fails to raise MERITORIOUS GROUNDS in this petition.

What is Cumulative error, violating petitioner's Constitutional rights pertaining to petitioner's claims.

## 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:

### CRAIG KOENIG, warden

Petitioner is being deprived of his Liberty illegally and is suffering with One-hundred and Fifteen years to life in State prison at the Correctional Training Facility at Soledad, California. (C.D.C.R.).

X \* NOTE: Prior to this petition, the party subject on the Previous petitions was RAYMOND MADDEN, warden of Centinela State Prsion, C.D.C.R.. Petitioner transferred. This is his first petition in this Court. Petitioner believes it is appropriate to change the name of the warden, Since the vehicle is Habeas Corpus.

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- APPENDIX (9) FRANCO'S LIMOUSINE TINTED WINDOWS (PHOTO).
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- APPENDIX (11) SUPPORTING EXHIBITS. (Marked using letters).  
(FROM HERE OUT EXHIBITS).

List of Exhibits

Exhibit A: Calif. Supreme Court denial of State Habeas Corpus, date 8-22-2012. No:s199354

Exhibit B: Federal Habeas Corpus filed in U.S. District Court, Date, 9-7-2012. EDCV12-0153 VBF (JCG)

Exhibit C: Denying Habeas Corpus at D.C., Date 11-19-2014. 9civil docket)

Exhibit D: Order from Ninth Circuit Court, denied, dated: 11-12-2015. NO:14-56851

Exhibit E: Oscar Galeanas criminal background, dated: 12-21-2015. (newly discovered.)

Exhibit F: Savino Mendez, criminal record Dated: 12-21-2015. (newly discovered.)

Exhibit G: Petitioner request for discovery from Public Defender, 2-8-2016. (letter.)

Exhibit H: Received Box of discovery from Public Defender, dated: 2-19-2016. In the box was Savino Mendez's criminal record, dated 9-28-2016.

Exhibit I: Received acknowledgment of receipt of 4 boxes of case materials, including transcripts from Marilee Marshal, dated April 18, 2016.

Exhibit J: Officer BeBee police report (Franco case) dated 4-2-2006.

Exhibit K: Detective Medici follow up report dated 4-19-2006.

Exhibit L: Marilee Marshal letter of issues not raised dated 7-13-2011

Exhibit M: Irma Franco criminal background dated 12-23-2015. (newly discovered)

Exhibit N: Officer Brauns report dated 4-5-2006.

Exhibit O: Parole officer report to Board of Prison Terms, dated 4-19-2006.

Exhibit P: Probation report face page dated 5-4-2007.

Exhibit Q: Parole Revocation hearing with Board of Prison Terms, transcript, dated 4-16-2007. (newly discovered.)

Exhibit R: Robles investigation report (Savino), dated 8-8-2006.

Exhibit S: Robles investigation report (Conception), dated 8-8-2006.

Exhibit T: Robles investigation report (Karla), dated 8-8-2006.

Exhibit U: Robles investigation report (MAria) dated 8-8-2006.

Exhibit V: Defense A Picture of rear of Franco's car.

Exhibit W: Petitioner's Linda Todd declaration dated 12-14-2011.  
(newly discovered)

Exhibit X: Petitioner's step father Larry Todd's declaration dated 2-18-2015.

Exhibit Y: Ms. Marshall's letter not having criminal records date 2-18-2015.

Exhibit Z: Ms. Marshal's letter terminating appointment with petitioner dated 12-31-2015.

Exhibit AA: Robles investigation report Gabriella Hernandez dated 9-21-2006.

Exhibit BB: Robles investigation report Gilbert Hernandez jr. dated 8-17-2006.

Exhibit CC: Robles investigation Memory Hernandez dated 9-21-2006.

Exhibit DD: Court of Appeals State of California Fourth appellate District, Division one # D055334, Direct Appeal.

Exhibit EE: Petition for review #S185912.

Exhibit FF: Habeas Corpus to Supreme Court #S199354. SQ41592  
APPENDIX(4)

Exhibit GG: Trial attorney R. Quintino's letter to petitioner about trial tactics.

Exhibit HH: Denial from appeals court of current habeas corpus.

DO71826 Now Appendix (6)

## TABLE OF AUTHORITIES CITED

CASES	<u>UNITED STATES SUPREME COURT CASES:</u>	PAGE NUMBER
Brady V. Maryland (1963) 373 U.S. 83		(16)(28)(35)(31)
Brecht V. Abrahamson (1993) 507 U.S. 619, 623, 113 S.Ct 1710		(34)
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Gideon V. Wainright (1963) 372 U.S. 335, 83 S.Ct 792		
House V. Bell (2006) 547 U.S. 518, 554, 126 S.Ct 2064, 2086, L.Ed 2d 1, 32 LEXIS 4675		(12)(13)
Jones V. Barnes (1983) 463 U.S. 745, 754, 103 S.Ct 3308, 77 L.Ed.2d 987		(36)
Kyles V. Whitley (1995) 514 U.S. 419, 115 S.Ct. 1555		(34)
McCoy V. Norris 958 F.SUPP.420		(24)
Schlup V. Delo (1995) 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed 2d 808	(11)(12)(14)(16)(24)	
Strickland V. Washington 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed 2d 674		(11,16,26)

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Carriger V. Stewart, 132 F.3d 463 (9th Cir.1987)	(13)
Griffin V. Johnson, 350 F.3d 956 (9th Cir.2003)	(14)
Montgomery V. Peterson, 846 F.2d 407 (7th Cir. 2003)	(15)(17)
Nelson V. Hargett 989 F.2d 847, 850 (5th Cir. 1993)	(15)(17)
Ramonez V. Berghuis 490 F.3d 482, 488 (6th Cir. 2007)	(15)(17)
United States V. Barbour 813 F.2d 1232, 1234 (D.C.Cir. 1987)	(15)(17)
U.S. V. Howard Arias 679 F.3d 363,366 (4th Cir.1982)	(22)
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CALIFORNIA CASES:

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Inre Jones (1994) 27 Cal. App. 4th 1041	(36)
Inre Smith (1970) Cal.3d 192,197	(36)
People V. Boldine (2001) 94 Cal.App. 4th 773,779,144 Cal.Rptr.2d 570	(22)
People V. Diaz (1992) 3 Cal.4th 495, 559	(22)
People V. Feggans (1967) 67 Cal.2d 444, 447-448	(36)
People V. Herrera (2000) 83 Cal.App.46, 61, 98, Cal. Rptr.2d 911	(22)
People V. Lucas (1995) 12 Cal.4th 415, 444	(22)
People V. Merriman (2014) 60 C. 4th 1, 84	(23)
People V. Valencia (1985) 175 Cal.App.3d 381, 388	(36)
California evidence code 353(a) 402-405	(22)
People V. Wheeler (1992) 4 Cal. 4th 284,295	(28)
People V. Flood (1983) 18 Cal. 4th 470	(36)

Mueller & Kirkpatrick, Evidence under the rule p. 957 (2nd Ed. 1993) (36)

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

see: Pages 3-5

For cases from **federal courts**: Form 12 Denial

The opinion of the United States court of appeals appears at Appendix 2 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 5 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 Court of Appeals 4th APP. DIV. ONE court appears at Appendix 6 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**: (Form 12 Denial)

The date on which the United States Court of Appeals decided my case was 3-16-2018.

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**: (State Prisoner)

The date on which the highest state court decided my case was 6/28/17. A copy of that decision appears at Appendix 5.

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), 1251

(See attachment.)  
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## FEDERAL - QUESTION JURISDICTION

The exercise of Federal court power over claims arising under the U.S. Constitution, an act of congress, or treaty. 28 USCA § 1331

## OTHER JURISDICTION

Rule 17, This rule applies only to an action invoking the court's original jurisdiction under Article 3 of the constitution of the United States, see also U.S.C. § 1251 and U.S. const. Amdt 11.

A petition for an extraordinary writ in aid of the court's appellate jurisdiction shall be filed as provided in Rule 20. Issuance by the court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) § 2241, 2242, or § 2254.

## EXHAUSTED AVAILABLE REMEDIES

° Petitioner filed a writ of Habeas Corpus with similar claims in the Superior Court of the state of California for the county of Riverside on 12/13/2016.

Case No.: RIC 1616243, see: Appendix (7) Filing)

The Superior court's denial, date: 12/21/2016

See: Appendix (8)

° Petitioner filed a writ of Habeas Corpus with similar claims at the court of Appeals of California, Fourth Appellate District Division one, on or about 2/14/2017. His claims were denied on 3/9/2017. Case NO.: D07186

See: Appendix (6).

## FN: This is Petitioner's Second Habeas

His first Habeas was denied COA at the Ninth Circuit.

° Petitioner filed a writ of Habeas Corpus with similar clamis in the California Supreme Court on 4/28/2017, Case No.: S241592  
See: Appendix (4) copy of writ.

The Supreme court of Calif., denial, date: 6/28/2017, for untimeliness and successive. See: Appendix (5). (this was petitioner's second Habeas Corpus in California Supreme Court).

A petition seeking a writ of Habeas Corpus shall comply with the requirement of 28 U.S.C. § 2241 and § 2242, and in particular with the provision in the last paragraph of 2242: which requires a statement for the "reason for not making applicant to the District Court of the district in which the applicant is held".

Petitioner's statement in the instant case is:

"The petition is not applicable in the District Court because it would be petitioner's Second Habeas Corpus".

Permission is needed from the Ninth Circuit Court of Appeals before application to the District Court in which applicant is held, to be heard for the second time.

The Application to the Ninth Circuit Court is form 12.

° indeed petitioner filed for permission through form 12 to file a similar Habeas Corpus in the District Court at the Ninth Circuit Court of Appeals. on 8/22/2017, Case No.: 17-72379

See: Appendix (1).

° Form 12 Denied on 3/16/2018. See: Appendix (2)

The order stated: The application has not made *prima facie* showing under 28 U.S.C. 2244(b)(2)(A), (B)(i) and (ii). any pending motion denied as moot. No further filings will be entertained in this case, Denied. See: Appendix (2)

The habeas he was seeking permission to file was an attachment to form 12. See Form 12's, Habeas Corpus, marked as appendix (3)

The following reasons above are the reasons why adequate relief can not be obtained in any other form or from any other court.

The Ninth Circuit denial of form 12 closed the option for petitioner to take his claim to the District Court.

The exceptional circumstances should indeed, be Constitutional violations to warrant the exercise of this courts discretionary powers. The constitutional violations, Lay in petitioner's claims in his extraordinary writ of Habeas Corpus, where he believes the claims have merit and are now ripe for the Opinion of the United States Supreme Court.

There was never an adjudication on the merits of form 12's attached Habeas Corpus and does not preclude further application to this court. This court has the discretionary power and can give adequate relief that no other court can. Petitioner has never filed a writ in this court. This writ is his first.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment

**FIFTH Amendment**

Eleventh Amendment

Fourteenth Amendment

28 USC 1251

28 USC 1331

28 USC 1651

28 USC 2241

28 USC 2242

28 USC 2244

28 USC 2254

## STATEMENT OF THE CASE

Petitioner has two (2) cases that were tried together. Case No.: RIF129735. The Franco case, Police Report No.: P3-06-092-110 and the Mendez Case, Police Report No.: P3-06-093-325.

### 1. The Franco Incident.

On the evening of April 1, 2006, at around 6:30 p.m., petitioner was on his way to his mother's house from his apartment. (2 R.T. 383-385.) His wife, Gabriela, and his two children, Gilbert and Memory, were in the car with him. (2 R.T. 385.) He stopped at the stop sign at the intersection of Herman and Ambs, then turned left onto Ambs. (2 R.T. 385.) After he made the turn, he was traveling 15 miles per hour. (2 R.T. 286.) He looked in his rearview mirror and saw a vehicle approaching from his rear, at about 40 to 45 miles per hour. (2 R.T. 386.) He pulled over to let the car pass, and waved at it to indicate it should pass him. (2 R.T. 387.) Instead, the other car stopped and parked behind him. (2 R.T. 387-388.) Petitioner did not get out of the car, but pull out onto the road and continued driving. As he did so, the other car also pulled out and followed close behind him. Petitioner pulled over again, and the other car again stopped and parked behind him. (2 R.T. 388.) When Petitioner started moving, the other car followed him again. (2 R.T. 389.)

Petitioner then pulled over and stopped his car for a third time. (2 R.T. 390.) Petitioner looked in his rearview mirror and saw someone in the other car smiling. (2 R.T. 391.) Out of frustration, Petitioner picked up a closed can of beer and got out of his car. (2 R.T. 391.) he threw the can of beer at the other car, which was 15 feet away. (2 R.T. 392.) The can hit the hood and then bounced off and

hit the street. (2 R.T. 392.) After throwing the can of beer, Petitioner walked toward the other car, which he felt was threatening his family. (2 R.T. 393.) When he reached the rear of his car, the other car began to back up. (2 R.T. 393-394.) While the other car was backing up, his wife and son got out of the car and his wife began yelling at his son to get back in the car. (2 R.T. 395-396.) Petitioner put his son back in the car, bending over, and scolding him as he did so. (2 R.T. 396.) As Petitioner went to get back into his car, he saw the other car pull into the driveway. Petitioner drove away, traveling north on Amb. In his rearview mirror, he saw the other car going south. (2 R.T. 397.) He only saw the driver in silhouette, behind the windshield and could not tell if the person was a man or woman. (2 R.T. 394, 398.) He did not have a handgun; did not fire a gun at the car and did not point a toy gun.

The next morning Franco checked her car for damage because she had not looked at the back of her car the night before. (1 R.T. 71-72.) The hood was dented and scratched and she found what she believed to be a bullet in the passenger side bumper. (1 R.T. 71-73.) Her Husband pulled the object out of the bumper and they called the police. (1 R.T. 69, 73-74, 104-105, 123.) Officer Kenneth Beebe responded to the call and Franco told him about the incident the previous evening and her husband gave him the object he had taken out of the car's bumper. (1 R.T. 122-123, 125, 135.) Franco told Beebe that she recognized the driver from the area and thought he lived in the apartments on Pike and Herman. (1 R.T. 111.)

After Beebe learned that Franco had spoke to another officer the night before, he contacted the officer, Eric Meyer, and learned that no report had been taken. (1 R.T. 121-122, 134.) Due to the

circumstances and amount of information the officer received the night of the incident, he could not verify a crime had been committed and did not write a report. (1 R.T. 121-122.)

2. The Mendez Incident on April 4, 2006. (Prosecution Witness.)

Gilbert testified that neighbors on his grandmother's street, Bruce Avenue, made gestures at him and his sister when they were coming home school, that were rude and made him feel uncomfortable. (1 R.T. 181-182, 189, 191.) The man was mostly making gestures at his sister. (1 R.T. 182.) Gilbert stated, "like he put his hand right here and his tongue like this." (1 R.T. 182.)

At around 9:30 p.m. on the evening of April 4, 2005, Petitioner went to a house down the street from his mother's house. (2 R.T. 398-399)

He asked to speak to the gentleman of the house, but the woman told him he was not there. (2 R.T. 405.) Petitioner replied that he had seen the man whom he wished to speak to enter the house a few minutes earlier, and he needed to speak with him. The woman who answered went into the house, leaving the door ajar, and Petitioner saw her talking to someone through a window at the rear of the house. (2 R.T. 406.)

Petitioner had a toy gun, Exhibit 23, in his jacketpocket. He took it for protection because he had seen a lot of traffic coming to and from that residence. (2 R.T. 402, 404-405.) The toy gun was all black and there was no silver on it. (2 R.T. 492-493.)

Immediately after Petitioner asked the man inside the house to come outside, two men ran around the side of the house toward him. (2 R.T. 408-409.) Petitioner pulled the toy gun out and held it down at his side. (2 R.T. 409.) Petitioner pulled out the gun to warn them off because he thought the men were going to jump him. (2 R.T. 409.) He did not point the toy gun at either of them. (2 R.T. 409-410.) the

men asked Petitioner aggressively what was going on and Petitioner told them to stop. (2 R.T. 409.) In the meantime, the man in the house went further back inside. (2 R.T. 409-410.) Fearing the man was going to get a gun or weapon, Petitioner quickly walked to his car. (2 R.T. 410.) One of the men followed him, asking what was wrong, and Petitioner replied that the situation had turned bad, and they could discuss it another day. (2 R.T. 410-411.) Petitioner never saw Karla until she came to court. (2 R.T. 498.) Petitioner then got in his car and drove away. (2 R.T. 411.) Petitioner did not have a real gun during the incident and did not point a real gun at anyone in the house or at the two men outside. (4 R.T. 412.)

After Maria left the room, her mom started screaming loud so Karla also went to see what was going on. When she walked out she saw her dad running towards his room and Petitioner pointing a gun at him. (2 R.T. 301, 303.) Petitioner was standing in the living room, close to the hallway. (2 R.T. 303.) Maria was standing in front of the man and her mom was going towards her cousin's bedroom and was screaming. (2 R.T. 308.) Karla walked down the hall, got in front of Maria, and pushed her towards their mother, out of the way. (2 R.T. 309.) Petitioner was in the house for more than a minute and was standing in the living room pointing the gun down the hallway. (2 R.T. 325, 330.) Ernie started talking to Petitioner and they walked outside. Karla followed them and tried to get his license plate number. Ernie asked Petitioner why he was there and what his problem was. (2 R.T. 309.) Karla also asked him why he was there but he did not respond. (2 R.T. 312.) Karla memorized the license plate and then went in her room and wrote it down. (2 R.T. 312-313.) When the police came, she gave them the license plate number. (2 R.T. 318.)

## REASONS FOR GRANTING THE PETITION

In the case the petitioner is convicted of now, the level of physical harm is "0". That is true for both cases. Petitioner has been among prisoner's that have been convicted of double murder and with half the time of petitioner's.

Petitioner is not merely accused of a crime, he is serving one-hundred and fifteen years to life. With respect to SCHLUP V. DELO, (1995) Cite as 115 S.Ct. 851, Petitioner is not facing death, however, the way the sentence stands, Petitioner will ultimately die in prison.

Concerning the Franco Case only, petitioner cites Schlup (supra). Petitioner claims Miscarriage of Justice. If petitioner cannot prove Free-standing innocence, Citing SCHLUP, on the other hand, is procedural, Rather than Substantive. Petitioner's Constitutional claims are Based not on Innocence, but rather on contention that the Ineffectiveness of his counsel, See STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) Petitioner will Display in his Grounds the Ineffectiveness of assistance of trial counsel.

Infact there is no testimony or evidence that petitioner had a firearm other then from a Detective. Petitioner did not shoot at Franco, he did not shoot at her Vehicle and he did not have a Firearm the evening of 4/1/2006.

Under SCHLUP V. DELO (1995) 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808--which held in certain exceptional cases involving a compelling claim of Actual Innocence, State procedural default did not bar a Federal Habeas Corpus (1) The Habeas Corpus Court had to consider all evidence, old and new, incriminating and exculpatory, without regard to whether it would be necessarily be admitted under Rules of admissibility that would govern trial; and (2) on the basis of the total record, the court, rather than making an independent factual determination about what reasonable, properly instructed jurors would do. (KENNEDY, J. joined by STEVENS, SOUTER, GINSBURG, AND BREYER, JJ). As the petitioner hopes in this case.

In petitioner's case he was procedurally defaulted In the State Appeal Court. See Appendix (6) petitioner did cite SCHLUP in his Form 12 concerning the Franco Case. And denied under 28 U.S.C. 2244(b)(2). (Though petitioner has claims under SCHLUP standard). Petitioner cited WINSHIP in his Ground eight in the Supreme Court of California, but did not cite SCHLUP V. DELO.

Furthermore, In HOUSE, 547 U.S. 518, 554; 126 S.Ct.2064, 2086, L.Ed.2d 1, 32 (2006) LEXIS 4675 To overcome procedural Hurdle that PAUL HOUSE created by failing to properly present his claims in a Tennessee Court, He must demonstrate that Constitutional violations he alleges "Have probably resulted in the conviction of one who is actually innocent", such that a federal court's refusal to hear defaulted claims would be a Miscarriage of Justice. SCHLUP V. DELO, 513 U.S. 298, 326, 327, 115 S.Ct.851, 130 L.Ed.2d 808 (1995). The 9th circuit denied petitioner as cited.

All the petitioner did was throw a can, but he is not charged with that, or convicted of that. In the Franco case. Petitioner is convicted of ASSAULT with a FIREARM, Shooting at an Occupied motor vehicle, and Ex felon with a firearm. Petitioner is innocent of the convictions. (petitioner did run his new claims in the state courts).

When petitioner filed his Form 12 to the ninth Circuit Appeals court, he displayed a vast show of doubt concerning the Franco case. And that Appeals Court has held that, it is possible to meet this standard with evidence that "Cast a vast show of doubt" by calling into question the reliability of the proof of guilt.

CARRIGER V. STEWART (9th Cir.1987) 132 F.3d 463. Petitioner had displayed a picture that Riverside Police Officer BEBEE had taken of the Franco vehicle, it has "Limousine tinted rear windws". She had claimed: she saw petitioner standing in her rearview mirror on a very Dark Street. She also claimed she saw nothing in petitioner's hands. (See, Car window Appendix (¶))

Petitioner has obtained Criminal Records of witnesses he did not have at the time of trial. In HOUSE V. BELL, U.S. 518, 537, 126 S.Ct.2064, 2077, 165 L.Ed. HR 8; 2d, L.Ed. HR8, 2006, U.S. LEXIS 4675. The SCHLUP claim involves Evidence the trial jury did not have before it, the inquiry requires the Federal Court to asses how a reasonable juror would react to the over all Newly discovered evidence so require this. May include consideration of the credibility of witnesses.

In petitioner's case, this should include Galeana. His trial attorney did not challenge the evidence Galeana handed to Police or investigate his criminal Record for impeachment. This Court has the discretion to asses how a reasonable Juror would react, to this information. Galeana was never called as a witness.

Furthermore, the petitioner requests an Evidentiary Hearing, to the lower court. To include consideration of the Credibility of the witness, IRMA FRANCO. "Her view of petitioner through a rearview mirror while her windows have limousine tint on them, on a very dark street with very little lighting. See Appendix(q).

Also, the Ninth Circuit ruled in GRIFFIN V. JOHNSON (2003) 350, F.3d 956 (Newly presented evidence, as well as newly discovered evidence can be considered under SCHLUP) yet the Ninth Circuit still denied petitioners' Form 12.

The Petitioner obtained newly discovered evidence, as follows:

1. Oscar Galeana Criminal Record, Discovered Date: 12/21/2015.

See Exhibit "E" By KNOWLES and VACA INVESTIGATORS.

2. IRMA FRANCO Criminal Record, Discovered Date: 12/21/2015.

See Exhibit "M" By KNOWLES and VACA INVESTIGATORS.

3. Savino Mendez Criminal Record, Discovered Date: 12/21/2015.

See Exhibit "F" By KNOWLES and VACA INVESTIGATORS.

4. Petitioners mother Linda Todd Declaration Dated:12/14/2011.

See Exhibit "W" and

5. Petitioners step-fathers Declaration Dated:12/14/2011.

Provided by Marilee Marshall, petitioner's first Habeas Corpus attorney. See exhibit (B)(C).

6.

Petitioner's revocation of parole, transcripts of a hearing with the California Parole Board of Prison terms. Dated: 4/16/2007 Two peace officer's testify to a different version compared to a prosecution witness at trial that places petitioner in a house. Burglary Count, witnesses two different story's.

This new evidence, petitioner's attorney did not use in trial court. Petitioner had to discover this information after his trial, when the appointment was over with Public Defender Quintino. See Exhibit "Y", Habeas Corpus Attorney Ms. Marshall states not in file.

Petitioner tried to get a report from Private Investigator Vaca and Knowles on the Trajectory, that was impossible for the petitioner to do. See Exhibit "Z".

"During sentencing" the trial court stated that trial counsel testified about his trial tactics and performance during petitioner's trial. Petitioner was unable to get these transcripts (Another reason why petitioner should have an Evidentiary hearing)

Petitioner believes he did not have a fair trial in the Mendez Case, because of the Franco case, he was prejudiced. Plus count 5 the victim is Ernie. There is no information on Ernie.

fn: see federal appeals decisions authority better explained in ground (1)page 17 the following:

United States V. Mooney, 497 F.3rd 397 404 (4th cir 2007), Nelson V. Hargett, 989 F.2d 847, 850 (5th cir 1993) Ramonez V. Berghuis, 490 F.3d 482, 488 (6th cir 2007). Montgomery V. Patterson, 846 F.2d 407, 412 (7th cir 1988). United V. Barbour, 813 F.2d 1232, 1234 (DC cir. 1987)

Ernie was not at the scene when police got there. Ernie never made a statement or he never testified in a court of law or trial, (Hearsay).

Petitioner did not get to confront Ernie and believes he has a BRADY issue on this count. There's no information who he is what's his last name or where he lives. Yet petitioner suffers with 25 to life for the Ernie count. Petitioner is a prisoner and is suffering with 15 and 100 years to life. A three-strikes case. The Strikers are pre-1994, they are from 1983 and 1987.

Concerning Ernie:

The petitioner contends that he was denied his Constitutionally guaranteed right to effective assistance of counsel, when his trial lawyers failed to investigate and to present substantial <sup>evidence</sup> mitigating! Richard Quintino and Forest Wright. To apply the rule that was established at the time of his state-court conviction became final. Most the merits of his claims are in Strickland V. Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104. S.Ct 5052 (1984). This count should have been challenged for dismissal.

Petitioner has chosen a strict standard as SCHLUP V. DELO supra concerning the Franco conviction. However, petitioner believes the Mendez conviction are squarely governed by Strickland and his Brady claims. (Petitioner never cite SCHLUP for the Mendez conviction).

Petitioner contends all fazes of his trial resulted in a decision that was contrary to or involved an unreasonable application of clearly established Federal Law, as determined by the Supreme Court of the United States.

GROUND 1

DEFENSE COUNSEL CLEARLY DEMONSTRATED INEFFECTIVE  
ASSISTANCE OF COUNSEL ON MANY ACCOUNTS IN PETITIONER'S CLAIMS.  
THIS VIOLATED PETITIONER'S FUNDAMENTAL DUE PROCESS RIGHTS TO  
[LTR] AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO  
THE UNITED STATES CONSTITUTION

(A) By not conducting an adequate pre-trial Investigation:  
UNITED STATES V. MOONEY, 497 F.3d 397 404 (4th Cir. 2007)  
Counsel in criminal cases are charged with the responsibility  
of conducting appropriate investigations, both factual and legal,  
to determine if matters of defense can be developed;  
NELSON V. HARGETT, 989 F.2d 847, 850 (5th Cir. 1993)  
A defendant who alleges a failure to investigate on the part  
of his defense counsel must allege with specificity what the  
investigation would have revealed and how it would have altered  
the outcome of the trial;  
RAMONEZ V. BERGHUIS, 490 F.3d 482, 488 (6th Cir.2007)  
"A purportedly strategic decision is not objectively reasonable  
when the attorney has failed to investigate his options and make  
a reasonable choice between them;  
MONTGOMERY V. PETERSON, 846 F.2d 407, 412 (7th Cir.1988)  
Nonstrategic decision not to investigate is inadequate performance.  
UNITED STATES V. BARBOUR, 813 F.2d 1232, 1234 (D.C. Cir. 1987)  
It is especially important that counsel adequately investigate  
the case in order that at the very least he can provide minimally  
competent professional representation.

(A)

(1) Defense counsel Quintino should have hired an investigator to investigate and to properly examine the Franco case.

The only Evidence that petitioner had ~~was~~ a gun the night of 4-01-2006 came from the Riverside Police Detective, Mike Medici (2 RT 348-349) also, (2 RT 351, 355).

Petitioner's 11 year old son at the time, testified that petitioner Did not Shoot a gun (1 RT 173,195) Gilbert further testified that he did not tell police that petitioner Fired a gun, or that petitioner reached into the car and pulled a gun out (1 RT 172-173, 175,195 ). Gilbert testified that the officer was trying to make him say these things and was putting words into his mouth. (1 RT 172, 175, 189). This was not on tape/record or in camera.

Petitioner's attorney on first habeas corpus obtained NEW EVIDENCE A Declaration from his parents. His mother Linda Todd and Step-Father Larry Todd executed on 12-14-2011. (See Exhibit "W" and Exhibit "X") Both parents did not testify, but were present at the time when Detective Mike Medici interviewed Gilbert on April 18, 2006. Both Declarations support Gilberts testimony. This newly Discovered Evidence would have helped to impeach the states witness Detective Medici.

(2) Trial counsel should have sent an Investigator to examine Franco's vehicle. Franco had limousine tinted windows (See Appendix (9).) a picture of Franco's rear of vehicle, that includes the rear tinted window, Riverside Police officer BeBee had taken the next day.

Franco's view was already impaired according to the evidence. The evening of April 1st, 2006 while Franco was traveling down Ambs, Franco stated it was dark out, Completely dark (1 CT 59,62) Franco describes the street lighting on Ambs as not good in fact she remembers it being Fairly Dark (1 CT 63).

Further pictures could have been taken. An Investigator could have shown this picture(s) to an installer that places tint on vehicle windows to have an idea just how dark Franco's windows were. Looking at this picture that is marked as Appendix (9), a person could tell by looking at it, that you are unable to see inside Franco's car, during the day when the picture is taken. In contrast, a person is able to see inside the truck, that is in the picture with the Franco car.

An Investigator could have testified that Franco's vision of the petitioner was not good the evening of 4-01-2006. While looking through a rearview mirror with limosine tinted windows.

Petitioner testified for his own behalf and stated that Franco had tint on all windows, except for the windshield, This was on cross-examination, when asked to describe Franco's vehicle (2 RT 441) the trial attorney never mentions the Tinted windows.

To point out the windows of Franco's car, Its important because it challenges her credibility as a witness of what she claims she saw that evening of 4-01-2006.

Franco states she makes a u-turn and sees petitioner bending down reaching for something under the drivers seat. (1 CT 55-56, 69). But did not see anything in the petitioner's hand (1 CT 70) while Franco drove away, looking in her rearview mirror, she saw petitioner in the street with one arm extended, pointing at the rear of her car (1 RT 59-60, 91-92).

When Franco made a u-turn her headlights would then be facing or pointing South, In evidence both vehicles were traveling North bound with the shoulder on the right-side. Before the U-turn. It would be completely dark as Franco describes that street and where she places the petitioner once she made the U-turn. Her view would be impaired with the tinted windows.

(3) Defense counsel should have Investigated this case thoroughly by interviewing the first responding officer. (Eric Meyer did not testify at trial).

Through testimony it was found that Eric Meyer, the first responding Riverside Police Officer went to the Franco residence one hour later, the evening of 4/1/2006. He interviewed Franco and examined her car. He did not write a report because he did not believe a crime was committed (1 RT 121-122, 134). According to Franco he wrote down notes and said okay and left. (1 RT 66).

It was important to interview this Police Officer because it was early in the investigation. Franco could have told him who really was in her car or maybe she said something that supported Gilbert that he got out of the rear passenger drivers side door (1 RT 187-188) also (1 RT 168, 170-171, 188) (2 RT 396).

Meyer could have known or had more information to impeach Franco, yet he was never contacted, subpoenaed nor was his notes ever obtained or introduced into evidence to impeach Franco.

(B) DEFENSE COUNSEL SHOULD HAVE REQUESTED A PRETRIAL HEARING TO CHALLENGE PEOPLES 24 FOR SUPPRESSION PURPOSES, THE BULLET WAS ALLOWED INTO EVIDENCE.

(4) The bullet was tampered evidence, it is a foundational issue and improper chain of Custody of physical evidence which was handed to the Riverside Police Officer, by Galeana, an ex-felon.

It was the next day when Franco called the police for a second time and officer BeBee arrived around noon, 4/2/2006. The bullet was not in the bumper, it was Franco's husband who gave him the Bullet. BeBee took the evidence from Oscar Galeana and then booked the Bullet into evidence. There was no Scientific testing performed on the Bullet in question. (1 RT 122-123; 125, 135-136). It is clear from the record that Two Police Officer's go out and interview Franco, and inspect her car. Both Officer's do not see a bullet embedded in the right passenger side bumper. According to Detective Medici, there was never any Forensics done on the Bullet or the bumper. (2 RT 357).

Officer BeBee's testimony at petitioner's preliminary hearing stated that "it was not until the next day that Franco now decided she was shoot at. (CT 109-110).

"The chain of Custody" rule is but a variation of the principle that real evidence Must be Authenticated prior to its admission into evidence". According to U.S. V. HOWARD ARIAS (4th Cir.1982), 679 F.3d 363, 366. "The purpose of this threshold requirement is to Establish that the item intorduced... is what it purports to be". MUELLER & KIRKPATRICK, Evidence under the rule P.957 (2nd ED. 1993).

In the State of California, Consequently, "chain of custody issues are Presented whenever physical evidence capable of submission to the jury is introduced at trial, PEOPLE V. BOLDINE, (2001) 94 Cal.App.4th 773, 779, 144 Cal.Rptr. 2d 570. The chain of custody is established when the party offering a particular item in evidence shows that it is reasonably certain the evidence has not been altered. PEOPLE V. LUCAS (1995) 12 Cal. 4th 415, 444; PEOPLE V. DIAZ (1992) 3 Cal. 4th 495, 559. The reasonable certainty standard is, essentially, the equivalent of proof by a preponderance of evidence. PEOPLE V. HERRERA (2000) 83 Cal.App. 46, 61, 98; Cal.Rptr. 2d 911.

In the instant case the evidence had been altered. It is alleged that Galeana removed the bullet from the bumper. There is no direct evidence from any source to show that petitioner had a firearm the evening of 4/1/2006.

The Bullet should have been precluded. It was the prosecutions key evidence in this case against petitioner.

(b)

Also, trial counsel Quintino failed to object to the alleged bullet, when the prosecution entered it into evidence. This objection must be both timely and specific, Calif.Evid. code 353 (a) People V. Merriman (2014) 60 c 4th 1, 84.

For trial counsel not objecting and move for an In Limine motion at the time of the bullet admission, this violated Petitioner's due process rights under the Sixth and Fourteenth Amendments. Had it been up to the petitioner, he would not have defaulted this important claims.

There could be no strategical trial tactic for trial counsel omission. Counsel should have known what evidence maybe subject to exclusion. If the alleged bullet gets suppressed by the trial court, because of the motion there would be no Franco case. The outcome would be different.

This would have also effected the outcome of the Mendez case because the alleged bullet was prejudicial. There is no physical evidence of a real gun, there is a toy gun in evidence. In the preliminary hearing testimony of Savino describing the gun he saw the night of the incident matches Detective Medici's testimony of the description of the toy gun.

Petitioner should not be penalized for trial counsel Quintino's omissions.

(5) Defense counsel should have investigated all witnesses for their criminal record for Impeachment purposes. Oscar Galeana who handed the alleged bullet to Police Officer BeBee, the court minutes indicate that witness Galeana did not testify during the proceedings, such that he could have been either Cross-examined regarding the finding of evidence, to include impeachment with his criminal record. The petitioner contends that at a minimum, an argument could have been made in the trial court that origins of the bullet were Suspect, (See Exhibit "E"). Galeana's criminal record is Newly Discovered evidence. Regarding the Franco case, in:

SCHLUP V. DELO, (1995) 513 U.S. 298, 115 S.Ct. 851

Newly discovered evidence is not a necessity in habeas corpus relief and that evidence in question dose not need to be newly discovered only newly presented in a habeas corpus petition. A credible claim of actual innocence involves the petitioner's supporting his constitutional claims with "new reliable evidence whether it be exculpatory scientific evidence. Trustworthy, eyewitnesses accounts, or critical physical evidence that was not presented at trial. "Id. The Court "is not bound by the rules of admissibility that would govern at trial. "And should" consider the probative force of relevant evidence that was either excluded or unavailable at trial. "Id" [A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, No juror acting reasonably would have voted to find him guilty beyond a reasonable doubt. Id., also see MCCOY V. NORRIS, 958 F.Supp. 420 (E.D. ARK. 1996).

(6) Regarding the Mendez Case, 4/4/2006: Defense counsel failed to impeach Savino with his Criminal record and Investigate the Gun enhancement that was stricken from Savino's record. See new evidence Exhibit "F", Savino's criminal record.

On November 20, 2006 at petitioner's preliminary hearing, Savino testified that he went to his front door. He stopped at the front door and did not go outside, he stated that petitioner was standing on the outside of the door (1 CT 99) and for the first time Savino mentions that petitioner pointed a gun at Ernie (1 CT 87, 90). The judges opinion after arguments: With respect to the Burglary Mr. Mendez never did testify that the defendant came into the residence. (1 CT 125).

At trial Savino testified that petitioner entered the house with a foot inside the doorway, other witnesses at the residence Carla Savino's daughter testified to something different then to whats in evidence. It was important for the defense counsel to use all favorable evidence and impeach witnesses for their discrepancies in their statements and testimony's at trial.

(C) Petitioner had a different attorney at sentencing, Forest Wright and petitioner had a Conflict of Interest.

(7) Mr. Wright chose to remain quite during his new trial motion, Romero Motion and Sentencing. He refused to defend the petitioner during the penalty phase, also, Mr. Wright did not attach supporting documents to support the New trial Motion, The Romero Motion was just legal jargan and there was nothing positive to defend petitioner.

APPLICABLE LAW:

To establish entitlement to relief for Ineffective Assistance of Counsel, the Burden is on the defendant to show:

(1) Trial counsel failed to act in a manner to be expected of Reasonable Competent Attorney's acting as diligent, advocates: and (2) Counsel's omission deprived him a potentially Meritorious defense or, But for Counsel's deficient performance, It is reasonable probable that the outcome would have been different.

STRICKLAND V. WASHINGTON (1984) 466 U.S. 668 [104 S.Ct. 2052, 80 L.Ed.2d 674]. Counsel should have known that further investigation was necessary in this 3-Strikes case. The evidence is suggestive and to be able to attack the legitimacy of evidence would have been effective representation. Petitioner did not have that in this case. Letter from Attorney (See Exhibit "GG").

- (1) Defense counsel failed to obtain impeachment evidence of Detective Medici, Parents Declarations in Support of Gilbert;
- (2) Defense counsel failed to investigate Franco's Tinted windows her view of petitioner would not be good on a completely dark street at that time of night;
- (3) Defense counsel failed to interview the first responding officer, possible mitigating evidence of Franco. (he had in his notes);
- (4) Defense counsel failed to challenge at pre-trial the bullet allowed into evidence, had he done this there would likely be no Franco case. (Tampered evidence). (b) Counsel failed to object.

(5) & (6) Defense counsel should have investigated all witnesses for their criminal records, for Impeachment purposes, he needed this evidence when petitioner was fighting a three-strikes case.

(7) Mr. Wright did not support his motions during the sentencing phase and choosing to remain quite leaving petitioner without an attorney during the sentencing phase; Defense counsel's failure to do so Rendered petitioner's attorney deficient.

The prejudice is that absent this critical evidence, it is reasonably probable that petitioner would have obtained a more favorable outcome. For these failures could not have been a Strategic or Tactical one. Especially when the evidence against petitioner is more suggestive than strong. For these reasons petitioner respectfully requests this Court issue the Writ and grant the appropriate relief available.

FN:petitioner had three attorney's:karen lockheart, preliminary attorney;richard quintino, trail public defender and forest e. wright penalty phase attorney.

fn:petitioner should have never admitted to the priors.had counsel explained the to the hearing and meaning of law he would of never admitted to them.

Ground 2

Prosecutor failed to disclose exculpatory evidence. Required by State and Federal Constitution and by the Brady Discovery scheme and its progeny.

On May 10, 2006, Petitioner's preliminary hearing counsel on record Karen Lockhart filed an informal Discovery motion, any information required to be discovered by State and Federal Constitution, BRADY V. MARYLAND (1963) 373 U.S. 83.

The District Attorney did not Honor, whether innocently or knowingly. Violating petitioner's fundamental due process rights within the language of the 14th Amendment and of basic due process right. See Informal Discovery Appendix<sup>(10)</sup>. This included:

(A) The existence of any discoverable Felony or Misdemeanor convictions of any material witness, Also, all information known to law enforcement or to the D.A.'s Office concerning any criminal convictions or other specific facts and / or acts of misconduct involving Moral Turpitude of any witness or defendant, consistent with. PEOPLE V. WHEELER (1992) 4 Cal. 4th 284, 295.

(1) The prosecutor failed to provide to the defense Oscar Galeana's criminal record. If petitioner would have known of Galeana's criminal record he would have called him to pre-trial proceedings to suppress the tampered evidence he handed to Officer BeBee April 2, 2006. (1 RT 122-123).

The evidence in the Franco case is suggestive. No one saw petitioner with a gun, that same evening Officer Eric Meyer goes and talks to Franco, inspects her car and does not find probable cause, he did not write a report. Officer BeBee stated that the bullet was taken out before he got there next day (1 RT 139) Galeana handed the alleged bullet to Officer BeBee. Galeana is a material witness and the prosecution did not hand Galeana's criminal record over to the defense.

The prsoecution should have known Galeana had a criminal record and the tampering of the evidence would be in question. The prosecution should have given defense counsel Galeana's Criminal Record for a possible defense.

(2) Regarding the Mendez case: There was additional Count added after the preliminary hearing. That's Count 5 of the charging documents indicates the victim in this case is "ERNIE" no one with that name appears to have been involved in the instant matter and the minutes did not indicate the charge Amended, to State the actual name of the victim.

InFact Ernie was never produced at trial as a witness or victim, he has never filed a complaint or Ernie has never made a Statement. Petitioner was never able to confront this person as a victim and/or witness to this alleged crime. Ernie's identity and address was never disclosed to the defense for a potential defense in this case at bar. NO Jurisdiction.

(B) Relevant written or recorded statements of witnesses or reports of statements of Witnesses whom you intend to call at trial, including any reports or statements of experts made in conjunction with this case, including the results of Physical or Mental examinations, Scientific tests, Experiments or comparisions which you intend to offer into evidence at trial.

(3) The prosecutor did not give to the defense statements of witnesses: Carla Valencia Mendez before the time of trial. Carla's statement at trial is no where in the evidence infact it seems she was not even involved at all. The prosecutor and Carla's preparation meeting See (2 RT 332-335) it seems the DA and Carla were reviewing reports and left Carla alone to read the document's on the DA's desk. (Question to the Court: WHAT IS PERJURY AND WHAT IS MISCONDUCT ?).

The initial Police report for the Mendez Incident was written by Police Officer Braun on April 05, 2006. Brauns narrative stated that he was dispatched to 8743 Bruce Ave. around 9:44 P.M. regarding a man with a gun inside the reporting party's house, Braun noted that when he arrived, He spoke with the reporting party, Maria Valencia, Age 13, who told him that an unknown man walked into their house with a gun and pointed it at her father.

According to Braun, Maria stated that she was able to push the man away from her father and he then ran out the front door.

Maria saw the man drive away in a Dark Blue Honda Accord and saw the license plate. ( Exhibit "N"), Initial Police report for the Mendez Incidence.).

Police Officer Braun was not called to trial. Had petitioner known the difference he would have called Officer Braun to trial.

Detective Medici prepared a follow-up report on the Incident on April 19, 2006. (See Exhibit "K"). In his report Maria said she grabbed the gun and pushed petitioner's arm forcing him to stop pointing the gun at her father. Someone in the neighborhood was walking towards the house, so she started to push at petitioner outside and he left.

On 11-20-2006 Detective Medici had testified at the preliminary hearing and stated that Karla told Medici that she saw Maria push the petitioner and force him out of the house (1 CT.112-113) Medici further testified that Maria was 13 years old, about 4'6 and approximately 100 pounds (1 CT 118-119). Medici stated Maria pushed petitioner's weapon hand up and away from her father and push the petitioner out of the house.(1 CT 120).

This story goes on in a Parole officer's report to the Board of Prison terms.(Exhibit "Q").

The initial police officer Braun at a parole revocation hearing, after trial it appeared that Braun did not even know that the case went to trial or that there was any further developments after he took the initial report. (Exhibit "Q").

At the preliminary hearing, Savino stated when he went to the front door, petitioner was "Two-meters" or Six feet away from him. He was inside of the door and petitioner was standing outside of the door.(1 CT 99). Savino stated as he ran back to the bedroom, "Maria was going towards petitioner and yelling.(1 CT 93) He did not see anything else or see petitioner inside his house. The petitioner never went inside the Mendez residence. For further review of Investigation, See Exhibit's N,O,P,Q,R,T,V.

The story of Maria is important to the defense because for one, the prosecution is trying to describe the petitioner as unfavorable, throwing a gun around. The story of Maria if brought before a jury, would likely be unbelievable at trial.

At trial Carla testified she saw Maria standing in front of petitioner, that Maria was not saying anything or doing anything. Petitioner was pointing the gun down the hallway in the direction of her father went (2 RT 306-307, 308,311.) She went and got in front of Maria and pushed her towards their mother out of the way back and towards the bedroom. (2 RT 308,309.) Karla stated that Ernie started talking to petitioner and they walked outside. She followed and the license plate (2 RT 309,318). In the evidence Carla is 19 years old at the time.

Officer Braun was a key witness in this case. The court could view his initial report, See Exhibit "N", he also testified at petitioner's revocation hearing.

This new evidence is newly discovered and newly presented. See Exhibit "Q".

Carla's testimony was contrary to statements made in police reports, investigation reports, and testimony at his preliminary hearing. No where is Ernie in the house at the time of this alleged crime taking place.

The reports are consistent with an approximately 100Lb. little girl that physically attacks a 200 pound plus man at the time. Grabbing his gun arm while forcing him out of the house. (In other words, she gave petitioner the boot).

It is highly unlikely than not the jury would believe this version, while there is three (3) adult males in the front of the Mendez residence doing nothing. The petitioner contends that if the first story that is in evidence were told before the jury, there is a reasonable probability that the outcome would have been different. There is no evidence the petitioner crossed the threshold of the Mendez residence. The story was modified.

fn:savino mendez and detective medici discriptions of the gun is the same as the toy gun in evidence.see 1 ct 94 and 1 ct 117-118,black and ten inches long,detective medici retrieved the toy gun at petitioner mothers house.1 ct 120-121.there is no physical evidence or real evidence for the conviction of an ex felon with a fire arm.

FN.

Petitioner believes this is also an IAC claim for relief for not thoroughly investigating these witnesses and for not calling Officer Braun to petitioner's trial. (See ground 1,IAC). Had counsel did more thorough investigation in this case and conducted a thorough job, petitioner would not have had to testify in his own behalf for which he had no witnesses other than what was written. (See Ground one).

### Applicable Law

The three Brady issues in this ground:

(1) Galeana's criminal record. Had the prosecution handed over this information to the defense, petitioner would of served Galeana with a subpoena and requested a pretrial hearing for impeachment of Galeana and also, request a hearing for Authenticity and chain of custody of the tampered evidence, Galeana handed to police. Galeana's criminal record is favorable to the accused. (The bullet was prejudicial.)

(2) Count 5, the victim is Ernie. There is no evidence pertaining to Ernie. NO Last Name, Address, Phone number or even a picture of Ernie. Ernie never filed a complaint, never made a report or never testified. Yet petitioner suffers 25 to Life for this count.

(3) Carla's trial testimony is no where in evidence. The difference between the two stories is believability, before the jury. Carla's story was prejudicial and the prosecutor did not give it to the defnse.

Petitioner's Brady claims should pass Brady's three (3) components:

- (1) Exculpatory or impeaching evidence
- (2) Suppression by prosecution, and
- (3) prejudice.

Kyles V. Whitley (1995) 514 U.S. 419, 115 S.Ct. 1555, (once Brady violations is established, no further harmless error analysis is required on Federal Habeas review because reasonable probability that outcome would have been different establishes that error had substantial and injurious effect or influence in determining the jury's verdict as required by Brecht V. Abrahamson (1993) 507 U.S. 619, 623, 113 S.Ct. 1710

The prosecution's only witness that petitioner pointed a gun at Ernie was Savino Mendez, Suggesting this.

It seems the prosecution should have produced all of the above evidence pertaining to Ernie, that was part of the informal discovery motion.

Petitioner did not assault Ernie with a Firearm at Mendez's residence on 4-02-2005. There is no evidence, and no intent to commit a felony.

The prosecutor is obligated to give to the defense, all Brady Material, See Appendix (10)(Motion for discovery.)

GROUND 3

PETITIONER WAS DENIED HIS SIXTH AND FOURTEENTH AMENDMENTS RIGHT'S TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

The right to effective Assistance of counsel includes the Right to effective assistance of Appellate Counsel. JONES V. BARNES (1983) 463 U.S. 745, 754, 103 S. Ct.3308, 77 L.Ed.2d 987; DOUGLAS V. CALIFORNIA(1963) 372 U.S. 353, 83 S.Ct.814, 9 L.Ed.2d 811; EVITTS V. LUCEY(1985) 469 U.S. 387,397, 105 S.Ct.830, 83 L. Ed. 821; In re JONES(1994) 27 Cal.App.4th 1041; PEOPLE V. VALENCIA(1985) 175 Cal.App.3d 381,388, overruled on unrelated grounds in PEOPLE V. FLOOD(1983) 18 Cal.4th 470; In re SMITH(1970) Cal.3d 192,197; PEOPLE V. FEGGANS(1967) 67 Cal.2d 444,447-448.

Although Appellate Counsel has no constitutional duty to Raise every non-frivolous issue requested by defendant, An indigent Appellant is entitled to counsel who acts as an ACTIVE ADVOCATE. JONES V. BARNES,*supra*, 463 U.S. at 754.

A criminal defendant is entitled to effective Assistance of counsel on Appeal, and such a claim is cognizable in a Habeas Corpus proceeding. In Re JONES,*supra*, 27 Cal.App.4th at 101. In the instant case, petitioner had a similar Habeas Corpus filed in the State court of Appeal, Fourth Appellate District, Division One.

Judicial Notice was taken on or about March 09,2017.  
Case No.:D055334.

In the opinion, among stating the petitioner was untimely,\* also stated: The claims alleging BRADY VIOLATIONS are further barred because they could have been asserted on appeal, but were not.(This is the petitioner's point.).

Petitioner was denied his Sixth and Fourteenth Amendment right to Effective Assistance of Appellate Counsel on direct appeal. Appellate counsel failed to raise potentially Meritorious grounds on appeal, despite the fact that such issues were evident in the record on Appeal.

In the Mendez case, petitioner appeals attorney should have known that a Burglary is if the defendant entered with the intent to commit an assault with a firearm, Penal Code § 245(A)(2).

The defendant does not need to have actually committed an assault with a firearm as long as he has the intent to do so.

In the evidence, it is missing the intent. There is no physical evidence petitioner had a real gun. Detective Medici searched petitioner's Apartment, his car, and petitioner's Mother's residence and yard. In evidence it is nothing more than the toy gun: petitioner did not use it as a club; there is no physical evidence of that in this case.

fn.

\*Untimely was explained in the begining of this Habeas Corpus. And also explained to the State Appellate court, See a similar habeas corpus filed in the California Supreme Court, Appendix 4. Petitioner did have grounds for Ineffective Assistance of Appellate Counsel in the state courts.

Including Counts 2 and 6, the ex-felon with a firearm in violation of Penal Code §12021 Sub. Div.(A)(1), There is NO evidence that petitioner had a real gun. At his preliminary hearing Savino Mendez was asked about the gun petitioner had in his possession on the night in question. Savino Mendez stated it was Black and 10 inches long. Detective Medici was asked to describe the Toy gun that he took from petitioner's Mother's residence. Detective Medici stated it was BLACK 8 to 10 inches long. The evidence points to the Toy gun.

The appellate attorney should have known of the petitioner's claims in this Writ. It is evident in ground 1 and ground 2. The appellate attorney could have challenged the legitimacy of the conviction. This would have been Effective Representation.

Appellate counsel's failure to do so rendered petitioner's attorney deficient. There is 0 physical harm in this case and petitioner has suffered with a 115 years to life sentence and has over 12 years served in state custody.

The prejudice is absent of Investigation and Critical and CRUCIAL evidence remians unheard.

It is reasonably probable that petitioner would have obtained a more favorable outcome had the Appellate attorney raised the grounds in this writ.

GROUND 4

PETITIONER WAS DENIED HIS FEDERAL DUE PROCESS RIGHTS BY THE COMBINED EFFECT OF INDIVIDUAL ERRORS.

THIS VIOLATED PETITIONER'S FUNDAMENTAL DUE PROCESS RIGHT'S TO [LTR] AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

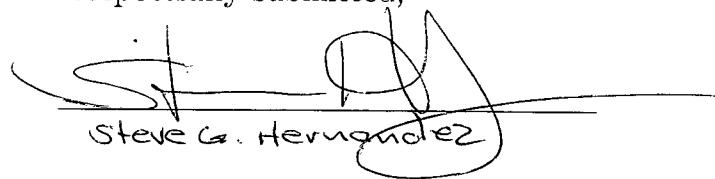
In combination which rendered this petitioner's due process rights far less persuasive than it otherwise would have been in trial and on direct appeal. CHAMBERS V. MISSISSIPPI(1949) 410 U.S. 284.

It is reasonably probable, Omitting these Combination[s] of errors, that petitioner has raised in grounds 1 through 3. Petitioner would have obtained a more favorable result had counsel been effective on appeal without the errors.

## CONCLUSION

The petition for a writ of HABEAS CORPUS EXTRAODINARY WRIT SHOULD BE GRANTED.

Respectfully submitted,



Steve G. Hernandez

Date: 9/6/2018

**Additional material  
from this filing is  
available in the  
Clerk's Office.**