

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD A. BARKER — PETITIONER
(Your Name)

CALIFORNIA vs.
BOARD OF PAROLE HEARINGS, — RESPONDENT(S)
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

RICHARD A. BARKER,
(Your Name) CDCR No. B-65996
CALIFORNIA MEN'S COLONY - STATE PRISON
P.O. Box 8101 Hwy 1

(Address)
SAN LUIS OBISPO,
CALIFORNIA 93409-8101

(City, State, Zip Code)

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(Phone Number)

COPY

QUESTION(S) PRESENTED

UNITED STATES CONSTITUTION - EIGHTH AMENDMENT
CONSTITUTIONAL PROPORTIONATE PUNISHMENT - INDIVIDUAL CULPABILITY

IF, IN 1978, THE CALIFORNIA PAROLE AUTHORITY * SET THE CONSTITUTIONAL PROPORTIONATE PUNISHMENT FOR THE MURDER OF CHARLIE BAKER AT ELEVEN (11) YEARS INCARCERATION ** AND A THREE (3) YEAR PAROLE TERM TO SERVE FOR THE PERPETRATOR'S INDIVIDUAL CULPABILITY [ACTUAL KILLER] OF CHARLIE BAKER; IS FORCING PETITIONER BARKER TO SERVE THE CONSTITUTIONAL EXCESSIVE PUNISHMENT OF FORTY FIVE (45) YEARS INCARCERATION *** [TO DATE WITH NO END IN SIGHT] FOR HIS INDIVIDUAL CULPABILITY [ACCOMPLICE LIABILITY - AIDER & ABETTOR] IN THE MURDER OF CHARLIE BAKER, A VIOLATION OF THE UNITED STATES CONSTITUTIONAL EIGHTH AMENDMENT'S CONSTITUTIONAL PROPORTIONATE PUNISHMENT WHICH REQUIRES "CRIMINAL CULPABILITY MUST BE LIMITED TO HIS PARTICIPATION IN THE OFFENSE AND HIS PUNISHMENT MUST BE TAILORED TO HIS PERSONAL RESPONSIBILITY," AS HELD FUNDAMENTAL IN ENMUND v. FLORDIA, 458 U.S. 782, 801 (1982) ****

* -- If a California LIFER was incarcerated in 1975, his parole release was predicated 100% on The California Supreme Court's ruling in In re Rodriguez (1975) 14 Cal.3d 639, 650-653, both Petitioner Barker and the perpetrator [actual killer] of Charlie Baker were incarcerated in 1975 - parole release controlled by Rodriguez, recently upheld in In re Butler (2018) 4 Cal.5th 728.

** -- The perpetrator's Constitutional Proportionate Punishment of ELEVEN (11) YEARS of incarceration for his individual culpability for being the actual killer of Charlie Baker, included being issued his THREE (3) YEARS of "Earned Good Time Credits." (Weaver v. Florida, 450 U.S. 24, 32-34 (1981))

*** -- Petitioner Barker has [to date] TWENTY (20+) YEARS of "Earned Good Time Credits," and when calculated into his Constitutional Proportionate Punishment produces FORTY FIVE (45) YEARS of incarceration and TWENTY (20+) YEARS of "Earned Good Time Credits" or SIXTY FIVE (65+) YEARS of incarceration for his individual culpability in the crime. (In re Rosnkrantz (2000) 80 Cal.App.4th 409, 423-424 fn 16(conduct credits - same as time served))

**** -- Enmund's Constitutional requirements, of Constitutional Proportionate Punishment based on the criminal's individual culpability in the offense and his punishment must be tailored to his personal responsibility, was the LAW in California in 1975, In re Rodriguez (1975) 14 Cal.3d 639, 650-653(primary term must be set constitutionally proportionate to defendant's individual culpability and tailored to his personal culpability in the offense) recently upheld in In re Butler (2018) 4 Cal.5th 728, 745.

I.
REASONS FOR GRANTING THE PETITION

The compelling reason this Court should grant review of this Writ (USSC Rule 10), is to correct the recent decision by the California Supreme Court in In re Butler (Cal.2018) 4 Cal.5th 728, 746("A sentence violates the prohibition against unconstitutionally disproportionate sentences only if it is so disproportionate that it 'shocks the conscience.'"(citing In re Lynch (Cal. 1972) 8 Cal.3d 410, 424))

This NEW holding and NEW change in the constitutional proportionate punishment based on the defendant's individual culpability in the crime, by the California Supreme Court, is not only in direct contradiction of the State's own constitutional holding's held in In re Rodriguez (1975) 14 Cal.3d 639 650-653(basically over-ruling Lynch three years after its decision "shocks the conscience") but is in direct conflict with this Court's precedent case law establishing that the United States Constitution Eighth Amendment mandates "criminal culpability Must be limited to his participation in the offense and his punishment must be tailored to his personal responsibility in the offense." (Enmund v. Florida, 458 U.S. 783, 801 (1982); Atkins v. Virginia, 536 U.S. 304, 305("diminished personal culpability - the severity of the appropriate punishment necessarily depends on the offender's culpability"); See Also, Solem v. Helms, 463 U.S. 277 312 (1983); Penry v. Johnson, 532 U.S. 782, 789 (2001)("the court should be reflective to the finding as to personal culpability")(Rule 10(c))

This was the California law in 1975, the year of Petitioner Barker's conviction & sentence held by the California Supreme Court in In re Rodriguez (1975) 14 Cal.3d 639, 650-653(must fix primary term - constitutional proportionate to individual culpability in the offense and tailored to his personal responsibility/culpability in the crime)

This Court must find the California Supreme Court's NEW holding that the ONLY disproportionate punishment in California is a sentence that "shocks the conscience," is in direct conflict with this Court's holding's and is violative of the United States Constitution - Eighth Amendment.

II.

REASONS FOR GRANTING THE PETITION

The second and most likely more important reason this Court should grant review of this Writ (USSC 10(c)), is correct the recent decision by the California Supreme Court - In re Butler (Cal. 2018) 4 Cal.5th 728, 737("Instead, those inmates' indeterminate terms end when the inmate is both (1) found suitable for parole and (2) has served their statutory minimum term (subject, of course, to the Board's internal review procedures and the Governor's power to reverse a grant of parole or request further review."); 477("Instead, the release date for indeterminately-sentenced adult inmates - like Butler - is now guided by the date when an inmate has served the statutory minimum term and is found suitable for parole based on statutory public safety -- related criteria, subject to limited exception.")

The California Supreme Court in Butler has held, that the Board's parole regulatory law and the State's statutory parole laws today/now conflict and supersede the United States Constitution's Eighth Amendment mandate/requirement that the 'term to serve' must be Constitutionally Proportionate Punishment reflective to the finding as to the personal [individual] culpability of the defendant/inmate in the crime." (I. Question Presented, supra, as to the USSC precedent/controlling case law)

This important federal question requires this Court to grant review, as no State agency regulatory or statutory parole laws is permitted to supersede this Court's relevant decisions as to the mandates of the United States Constitution Eighth Amendment.

The United States Constitution Eighth Amendment as held by this Court's precedent controlling case law (cited ante.) is the LAW in America ,, not State laws ,, that conflict and supersede our United States Constitution.. Review of this writ is required.

In the interest of justice and for good cause showing, Petitioner Barker respectfully requests this Honorable Court "liberally construe" this Certiorari Writ, as he is filing in pro se - indigent - layman in law status. As announced by this Court as precedent case law and established law within this Court, that "pro se pleadings, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyer' . . . pro se pleadings are to be 'liberally construed.'" (Erickson v. Pardus, 551 U.S. 89, 91 (2007)(citing Estelle v. Gamble, 429 U.S. 97, 106 (1976)); See, McNeil v. United States, 508 U.S. 106, 113 (1993); Hughes v. Rowe, 449 U.S. 5, 10 fn 7 (1980); Haines v. Kerner, 404 U.S. 519, 520 (1972)

-- Respectfully Submitted --

"LIBERALLY CONSTRUED"

All CLAIMS in this Writ are United States Constitutional violations of Petitioner Barker's rights as held by this Court's precedent controlling case law. The only cited State case law in this Writ is to show/prove Petitioner Barker's State & Federal Constitutional rights guaranteed him in 1975 by the California Supreme Court holdings in In re Rodriguez (1975) 14 Cal.3d 639, California mandatory parole laws governing Petitioner Barker's release on parole. This Court's precedent controlling case laws [herein] - the United States Constitution controls in this Writ.

All federal claims herein have been presented and adjudicated by the California Supreme Court - California Court of Appeals.

LIST OF PARTIES

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

[X] 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:

RESPONDENT CALIFORNIA BOARD OF PAROLE HEARINGS

Is the Executive Branch's quasi-judicial administrative agency given the wholly authority by the State Legislature to determine the actual power to fix or refix prison terms to serve for LIFER TERM prisoner's in California and to grant & revoke parole is well establish. (Bennett v. California, 406 F.2d 36, 38 (9th Cir. 1969)(citing Dreyer v. Illinois, 187 U.S. 71, 83-84 (1902)("local statute investing a collection of persons NOT of the Judicial Department, with powers that are Judicial, authorizing them to exercise the pardoning power ... presents no question under the U.S. Constitution"); In re Butler (2018) 4 Cal.5th 728, 733("Prior to 1977, California's ISL, the state agency in charge of parole (then called the Adult Authority) had exclusive control over the period of incarceration the inmate actually served .."); See, In re Lawrence (2008) 44 Cal.4th 1181, 1201; Hornung v. Superior Court (2000) 81 Cal.App.4th 1095, 1099(citing Sellars v. Procnier, 641 F.2d 1295, 1304 (9th Cir. 1981), cert. denied, 454 U.S. 1102 (1981) Hence the CALIFORNIA BOARD OF PAROLE HEARINGS has complete control over the prison term Petitioner Barker has to serve.

RESPONDENT JOSIE GASTELO is the Warden of the California Men's Colony State Prison, where Petitioner Barker is incarcerated. Warden Gastelo has direct custody of Petitioner Barker and is responsible for his custody and treatment. (Cal.Pen. Code § 2080; Cal.Code Regs., tit. 15 § 3380(a)(Chief Executive Officer)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION - EIGHTH AMENDMENT

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." CLAIM: Constitutional Proportionate Punishment Based on the Defendant's Individual Culpability. (Atkins v. Virginia, 536 U.S. 304, 311 (proportionate principles applies to non-capital sentences), 312 (2002)-(Enmund v. Florida, 458 U.S. 782 (1982))

*** COLLATERALLY & IN SUPPORT OF THE EIGHTH AMENDMENT CLAIM ***

UNITED STATES CONSTITUTION ART. I, § 9, CL. 3; ART. I § 10 EX POST FACTO CLAUSE

"ex post facto laws, forbids - every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed." (Peugh v. United States, 133 S.Ct. 2072, 186 L.Ed.2d 84, 93(citing Calder v. Bull, 3 Dall. 386, 390 (1798))

UNITED STATES CONSTITUTION - FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS & EQUAL PROTECTION

" . . . nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of law." (Roe v. Wade 410 U.S. 113 (1973)(substantive due process - constitutional rights - no amount of procedural procedures can correct substantive due process violations); Yick Wo. v. Hopkins, 118 U.S. 356, 367 (1886) (equal protection in the administration of criminal justice)

UNITED STATES CONSTITUTION - ART. I, § 1

DOCTRINE OF RES JUDICATA

"FULL FAITH & CREDIT CLAUSE"

"[State] administrative agencies acting in judicial capacity USSC will not hasitate to apply res judicata to enforce repose." (United States v. Utah Construction & Mining Co., 310 U.S. 381, 401-402 (1966); B & B Hardware, Inc. v. Hargis Industries, 191 L.Ed.2d 222, 236 (2015)(res judicata - State administrative agencies))

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728 - Univer. Southern California

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**:

California Supreme Court

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.

**California Court of Appeal
First Appellate District**

The opinion of the _____ 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.

The only reasoned decision in this State habeas petition was from the Superior Court of the State of California for Contra Costa County [filed: September 12, 2017] and appears at Appendix C to the petition and was unpublished.

For this Court's information: (1) the only reasoned decision in this State habeas petition at Appendix C was denied without prejudice. (Appendix C at 6) (2) Petitioner Barker filed Appendix C (Case No. 5-171460-9 CoCoCty Superior Court) ANew [per California statutory law P.C. § 1473 et seq.) to the California Court of Appeal - First Appellate District Case No. A152684. (filed: October 23, 2017)(Appendix B) (3) This ANew habeas petition "augmented a complete record" with 450 pages of exhibits (Appendix B) correcting the Superior Courts denial without prejudice finding. (Appendix C at 6) (4) The Court of Appeal - First Appellate District accepted - filed - made a ruling on the merits. (Appendix B) (5) The USSC precedent law is established: that a 'one sentence denial (even without citation)' is a denial on the merits. (5) Similarity, the California Supreme Court's 'one sentence denial' is a denial on the merits presented to both the California Court of Appeal - First Appellate District (Appendix B) and the California Supreme Court habeas petition(s), Case No. S248055 [filed: April 4 2018] and the Supplemental habeas petition filed on May 9, 2018. (both habeas' - Appendix A). It should be noted for the convenience of this Court: Petitioner Barker has presented his response/opposition/argument against both the lower Court's denials to the above Court. (See, Appendix A & Appendix B)

It should be further noted: Petitioner Barker has presented his Federal Disproportionate Punishment base on his individual culpability CLAIMS (etc) to all three State Courts and receiving denials on the merits from the Court of Appeal & California Supreme Court - hence Petitioner Barker has 'exhausted his State administrative remedies' and timely files for relief with this Honorable Court [USSC].

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 July 25, 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).

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STATEMENT OF THE CASE

I.

The thrust of this case is simple and straight forward: in January 1971, Petitioner Richard Barker and his crime partner [WILLIAM MORAN, B-48420] killed Charlie Baker at a drug and alcohol party at the Richmond [California] Hells Angel's Clubhouse.

William Moran was arrested for, convicted of and sentenced to First Degree Murder for his individual culpability as being the perpetrator [actual killer] of Charlie Baker. (Reference: People v. Moran (1974) 39 Cal.App.3d 398, 402-404))

In counterbalance, Petitioner Barker was arrested for, convicted of and sentenced to First Degree Murder for his individual culpability, as an aider & abettor (accomplice liability) in the murder of Charlie Baker. (Barker v. Morris, 761 F.2d 1396, 1398 (9th Cir. 1985), cert. denied, 474 U.S. 1063 (1986))

Albeit, both Petitioner Barker and William Moran were sentenced to "7 years to Life" for their individual culpability in the First Degree Murder of Charlie Baker, under California Penal Code § 1168.

The California parole authority, applying the applicable parole laws in 1975 as held in In re Rodriguez (1975) 14 Cal.3d 639, 650-653, fixed/set the 'Constitutional Proportionate Punishment' for Moran's individual culpability [actual killer] of Charlie Baker in 1978 at "Eleven (11) Years of incarceration and a Three (3) Year parole term to serve." (Appendix D) The California parole laws in 1975 mandated this 'Constitutional Proportionate Punishment [term to serve] be based on the defendant's individual culpability and be tailored to his personal culpability in the crime.' Moran was released on parole in 1984 after serving 11 years incarcerated. (34 years ago)

In spite of the mandatory parole laws in 1975, the California parole authority [to date] has forced Petitioner Barker to serve 44 years incarceration for his individual culpability of being the aider & abettor (accomplice libability conviction), a constitutionally excessive punishment and in violation of the United States Constitution's Eighth Amendment. Petitioner Barker has served 5 - 6 TIMES more punishment for his less culpability in the offense, than the perpetrator. [fn 1]

fn 1: Moran was issued his "earned good time credits" which were calculated into his Constitutional Proportionate Punishment of Eleven (11) Years incarceration to serve for his individual culpability in the [actual killer] murder of Charlie Baker.

There can be no question [to date] Petitioner Barker has "earned" Twenty (20+) Years of "good time credits." When the parole authority calculates his 20+ years of 'earned good time credits' with his 44 years of incarceration it totals Sixty Five Years of time served or 5 - 6 TIMES the punishment required of the Moran the perpetrator in the crime.

By reference, Petitioner Barker submits, his last parole hearing Panel (July 21, 2017) failed to apply the Eighth Amendment's Constitutional Proportionate Punishment Standard - "[e]mbodied in the Cruel & Unusual Punishment ban is the 'precept that punishment for crime should be graduated and proportional to the offense.'" (Graham v. Florida, 560 U.S. 48, 179 L.Ed.2d 825, 829 (2010))(Weens v. United States, 217 U.S. 349, 367 (1910))

The 2017 Panel, gave less than 'lip-service' to Petitioner Barker's counsel's OBJECTION, that his punishment in the offense, has become disproportionate for his individual culpability in the crime. (Appendix E at 5:12-18)

The Panel in an egregious over-ruling the disproportionate punishment OBJECTION, was based 100% on the State's statutory and regulatory parole laws/rules - i.e. - "dangerousness to society and the free community," other than taking arguments and making their disproportionate punishment (Eighth Amendment Claim) decision at the beginning of the hearing (Appendix E at 5:19-25) instead the Panel announced a load of gobbledygook refusing to give the OBJECTION a mandatory full/fair decision. (Appendix E at 6:1-7)

Hence the Panel citing State statutory/regulatory parole laws to the deny the [Constitutional] OBJECTION, they've allowed those State laws to supersede and conflict Petitioner Barker's Constitutional right to Constitutional Proportionate Punishment based on his individual culpability in the offense. (id., at 179:19-22)

The above are significant irrefutable FACTS of the Case. Hence the only rational inference and mandatory compulsion of the Eighth Amendment is that Petitioner Barker has been forced to serve a constitutional excessive punishment.

A. The California parole authority's flagrant abuse of their discretion is further culpable by their refusal to hold Petitioner Barker's parole hearings under the mandatory parole laws in 1975 as held in In re Rodriguez (1975) 14 Cal.3d 639, 650-653 and the Adult Authority Chairman's Directive No. 75/30 - the Implementation of In re Rodriguez dated: September 2, 1975. (Appendix F) These were/are the parole laws and mandatory requirements in 1975 the year of Petitioner Barker's conviction and sentence, which control his parole release, as applied at Moran's 1978 parole hearing.

The California parole authority has retroactively applied more onerous parole laws [parole laws after 1975] to Petitioner Barker at every parole hearing he has received for the last 40+ years, which has inflicted more punishment on him, in violation of his rights secured under the United States Constitution - Ex Post Facto Clause.

B. The California parole authority applied the parole laws of 1975 to Moran, but has refused to apply them to Petitioner Barker, which in itself is violative of the United States Constitution's Fourteenth Amendment of Equal Protect; which

implicates the United States Constitution's "Substantive Due Process" guarantees. Notwithstanding, the California parole authority's egregious abuse of discretion, they have changed Petitioner Barker's sentence from "7 years to Life" (minimum eligible parole date: February 6, 1982) to "Life Without the Possibility of Parole," denying Petitioner Barker his United States Constitutional right of NOTICE and his right to be heard on the changing of his sentence in a meaningful time and a meaningful manner. (U.S.Const. 14th Amendment - due process)

This Court must grant relief in this case.

MEMORANDUM OF POINTS AND AUTHORITIES IN LAW

THE CONSTITUTIONAL PROPORTIONATE PUNISHMENT FOR THE MURDER OF CHARLIE BAKER (1971) WAS DETERMINED BY THE CALIFORNIA PAROLE AUTHORITY (1978) TO BE FIXED/SET AT "ELEVEN (11) YEARS INCARCERATION AND A THREE (3) YEARS PAROLE TERM TO SERVE" FOR THE PERPETRATOR'S [ACTUAL KILLER] INDIVIDUAL CULPABILITY IN THE MURDER OF BAKER

I.

The United States Constitution - Eighth Amendment demands - mandate's "punishment must be proportionate and directly related to the personal culpability of the criminal defendant in the crime" (Penry v. Lynaugh, 492 U.S. 302, 319 (1989)) and "the prohibition against Cruel & Unusual Punishment rationale is that a criminal sentence/punishment must be directly related to the personal

culpability of the criminal offender." (id., 492 U.S. at 336(citing Tison v. Arizona, 481 U.S. 137, 149 (1987)); Enmund v. Florida, 458 U.S. 782, 825 (1982)(the Eighth Amendment concept of "proportionality requires a nexus between the punishment imposed and the defendants blameworthiness [culpability]")

This Court announced in Solem v. Helm, 463 U.S. 277, 284 (1983) [in part] the following:

"the principle of proportionality is deeply embedded into the very root of our legal system," and "the Court jurisprudence in the first classification is animated by this principle of proportionality in punishment," further, "it is a precept of justice that punishment for crime should be graduate & proportionate to the offense," (id., at 287(citing Weens v. United States, 217 U.S. 349, 367 (1910)(principle of proportionality as a Constitutional standard)), moreover, "recognizing that some prison sentences may be Constitutionally disproportionate," (id., 288(citing Hutto v. Davis, 454 U.S. 370, 374 fn 3 (1982(per curiam) - Rummel v. Estelle, 455 U.S. 263, 274 fn 11 (1980)(same), also, "this Court will compare the sentences/punishment imposed on other criminals in the same jurisdiction, which may indicate that the punishment at issue may be excessive" (id., at 291(citing Enmund v. Florida, 458 U.S. at 795-796)) and "the Enmund court determined that petitioner's conduct was not as serious as his accomplices conduct" - "turning to the culpability of the offender, there are clear distinctions the court may recognize and apply," (id., at 292-293(citing Enmund, 458 U.S. at 798)), further, "the proportionate punishment applies to non-capital crimes," id., at 287-289(citing Robinson v. California, 370 U.S. 660, 667 (1962); Hutto v. Davis, 454 U.S. at 374 fn 3 (1982); Rummel v. Estelle, 445 U.S. at 277 (1980)(non-capital

crimes); Ewing v. California, 538 U.S. 11, 20 (2003)(proportionate punishment applies to non-capital crimes)); Harmelin v. Michigan, 501 U.S. 957, 996-997 (1991)(non-capital)

The above Constitutional proscription against disproportionate punishment based on the individual culpability of the defendant in the offense, mandate's "the focus must be on his [individual] culpability, not on that of those who committed the [actual] murder, for we insist on 'individual consideration as a Constitutional requirement in imposing punishment.'" (See, Enmund v. Florida, 458 U.S. at 798; Lockett v. Ohio, 438 U.S. 586, 605 (1978) This Constitutional principle is applied equally to non-capital offenses. (Solem v. Helm, 463 U.S. at 287-289(citing Hutto v. Davis, 454 U.S. at 374 fn 3)) These Constitutional principles must be applied to Petitioner Barker's case.

The FACT, that the California Parole Authority in 1978 "set/fixed the Constitutional Proportionate Punishment for the 1971 biker murder of Charlie Baker at Eleven (11) Years incarceration and a Three (3) Year parole term to serve, for the actual killer - perpetrator [WILLIAM MORAN, B-48420] for his individual culpability as the murderer of Charlie Baker (See, Appendix D at 4) there can be no doubt ,, if the California Parole Authority refuses to hold the same Constitutional Proportionate Punishment for Petitioner Barker, who's individual culpability by law is less than Moran's, than the Federal Doctrine of Res Judicata is implicated.

DOCTRINE OF RES JUDICATA - UNITED STATES CONSTITUTIONAL Art. I § 1 - FULL FAITH & CREDIT CLAUSE - " . . . when an issue of FACT or LAW . . . this Court has explained in B & B Hardware, Inc. v. Hargis Industries, 191 L.Ed.2d 222, 236 (2015) this reflects the Court's longstanding view that " ' [w]hen an administrative [State] agency is acting in a judicial capacity and resolves disputed issues of FACT properly before it which the parties had an adequate opportunity to litigate, the Courts have not hesitated to apply res judicata to enforce repose.'"(citing University of Tennessee v. Elloitt, 478 U.S. 788, 797-798 (1986)("Congress presumptively intends that an agency's determination (there, a State [administrative] agency) has the preclusion effect) (quoting United States v. Utah Construction & Mining Co., 384 U.S. 394, 422 (1966)); Hayfield Northern R. Co. v. Chicago & Northern Western Transport. Co., 467 U.S. 622, 636 fn 15 (1984)(noting Utah Construction); Kremer v. Chemical Construction Corp., 456 U.S. 461, 484-485 (1982)(characterizing Utah Construction's - discussion on administrative preclusion as a holding)), at 238 "a valid & final adjudicative determination by an administrative [State] tribunal has the same effects under the rules of res judicata . . ."

Also relevant: " . . . we have long favored application of the common-law doctrines of [] and res judicata (as to claims) to those determinations of administrative [State] bodies that have attained finality . . . when an administrative [State] agency is acting in a 'judicial capacity' & resolves disputed issues of FACT properly before it, which the parties have had an adequate opportunity to litigate, the Courts have not hesitated to apply res judicata to enforce repose.'" Astoria F.S. & L. Assn. v. Solimino, 501 U.S. 104, 107-108 (1991)[numerous USSC citations]

FEDERAL DOCTRINE "LAW OF THE CASE" PRINCIPLES/CONCEPTS

The federal concept and doctrine enunciated by this Court's precedent case law - Christianson v. Colt Industries, 486 U.S. 800, 817 (1988) - "Law of the Case" . . . as a rule courts should loathe to do so (revisit prior decisions [in facts & law]) in the absence of extraordinary circumstances such as where the initial decision was "clearly erroneous and would work a manifest injustice" (Arizona v. California, 460 U.S. 605, 618 (1983)) ("Special Master" [administrative agency] decision ... that discretion should be governed by "[the] Law of the Case" principles. Unlike the more precise requirements of res judicata, law of the case is an amorphous concept. As most commonly defined, the doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case"); United States v. Hatter, 532 U.S. 557, 566 (2001) (Law of the Case doctrine); See, Pepper v. United States, 562 U.S. 476, 179 L.Ed.2d 196, 223-224 (2011) (doctrine law of the case); Masacchio v. United States 193 L.Ed.2d 639 648-649 (2016)

The obvious argument here is that once the California Parole Authority in 1978 "set/fixed the FACT [by the parole LAW of 1975] "the Constitutional Proportionate Punishment for the actual killer's individual culpability - tailoring his punishment to his individual responsibility in the murder of Charlie Baker," [an ordinary crime - committed under ordinary circumstances] at Eleven (11) Years incarceration [issuing him his earned good time credits -> 3 years calculated into the 11 years incarceration] and a Three (3) Year parole term to serve, that same decision based on FACTS & LAW come under this Courts common-law doctrines of res judicate and law of the case must be applied by the California Parole Authority to Petitioner Barker's punishment

for his individual culpability as the aider & abettor [accomplice liability] in the murder of Charlie Baker to do otherwise would violate Petitioner Barker's United States Constitution - Eighth Amendment guarantees of Constitutional Proportionate Punishment.

Under this version of the United States Constitution - Eighth Amendment, Petitioner Barker should have been released on parole "no later than 1985," (34 years ago) ... This did not occur, because the California Parole Authority has refused to apply Federal [and State] Constitutional guarantee's [Eighth Amendment; Cal.Const. art. I § 17] to Petitioner Barker's continued complaints to the Parole Authority. (Appendix E) When the California Parole Authority denies Petitioner Barker his rights guaranteed under the Eighth Amendment, and his rights secured under the federal doctrines of res judicata and law of the case, they further violate his rights secured under the United States Constitutional - Fourteenth Amendment - Substantive Due Process as held in USSC County of Sacramento v. Lewis, 523 U.S. 833, 840 (1998):

at 840: Our prior cases have held the provision that "NO STATE shall ... deprive any person of life, liberty, or property, without due process of law," (U.S.Const..., Amend. 14th § 1), to "guarantee more than fair process," (Washington v. Glucksberg, 521 U.S. 702, 719 (1997)), and to cover a substantive sphere as well, "barring certain government actions regardless of the fairness of the procedures used to implement them," (Daniels v. Williams, 474 U.S. 327, 331 (1986); Collins v. Harker Heights, 503 U.S. 115, 126 (1992))(noting that the Due Process Clause was intended to prevent government officials " ' " from abusing their power, or employing it as an instrument of oppression " ' " (quoting

DeShaney v. Winnebago County Dept. of Social Services,
489 U.S. 189, 196 (1989)(same) in turn quoting USSC
Davidson v. Cannon, 474 U.S. 344, 348 (1986))

Whereas -- the California Parole Authorities disabled holdings
- year after year - decade after decade that Petitioner Barker
is not entitled to have his Constitutional Proportionate Punishment
'parole release date set/fixed at less than the actual killer's'
(11 years incarcerated - 3 year parole term) and certainly
Petitioner Barker's Constitutional Proportionate Punishment for
his individual culpability in the (1971) Biker murder of Charlie
Baker cannot set/fixed at a constitutional punishment in excess
or a longer term to serve than the actual killer of Charlie Baker!

The above plethora of United States Constitutional violations
of Petitioner Barker's rights as held by this Court's
precedent/controlling case law, by the California Parole
Authorities calamitous & disastrous decisions (decade after decade)
to hold Petitioner Barker to a constitutional excessive punishment
by apply retroactively - more onerous parole laws to Petitioner
Barker's parole hearings - allowing these ex post facto parole
laws to supersede and conflict Petitioner Barker's Constitutional
rights to a proportionate punishment determination based on his
individual culpability in the offense, cannot stand.

"The focus must be on his [Enmund] culpability, not on that
of those who committed the [] and shot the victims
individualized consideration is a Constitutional requirement."
(Enmund v. Florida, 458 U.S. at 798) "In Enmund the Supreme
Court held that the Eighth Amendment does not permit the

imposition of the [capital] death penalty on a defendant who merely aids & abets a felony murder." (id., 458 U.S. at 797) "Enmunds criminal culpability must be limited to his participation in the offense, and his punishment must be tailored to his personal responsibility [in the offense]." (id., 458 U.S. at 801); Atkins v. Virginia, 536 U.S. 304, 305(diminished personal culpability - the severity of the appropriate punishment necessarily depends on the offender's culpability), 311(8th Amendment proportionality principles applies to non-capital sentences), 312(criminal culpability must be limited to his participation in the offense); See, Trop v. Dulles, 356 U.S. 86, 100-101 (1958) and Weens v. United States, 217 U.S. 349, 367 (1910)(punishment is "excessive" if not proportionate); Graham v. Florida, 176 L.Ed.2d 825, 841 (2010)(judicial exercise of independent judgment requires consideration of culpability of the offender .. along with the severity of the punishment); Penry v Johnson 532 U.S. 782, 789 (2001)(court should be reflective to "personal culpability"); Lankford v. Idaho, 500 U.S. 110, 118(Proportionality -> crime partner struck fatal blow - Lankford did not use deadly force on victim); Tison v. Arizona 481 U.S. 137, 149 (1987)(the heart of punishment is that a criminal sentence/punishment must be directly related to the personal culpability of the criminal offender - "we insist on individual consideration as a constitutional requirement in imposing punishment"); Penry v. Lynaugh, 492 U.S. 302, 319 (1989)(proportionality principle that punishment should be directly related to the personal culpability of the criminal defendant); Abdul-Kabir v. Quarterman, 550 U.S. 233, 251 (2007)(principle underlying punishment should be directly related to the personal culpability of the criminal offender); S. Carolina v. Gathers, 490 U.S. 805, 818 (1989)(non-killer less culpable)(citing Mullaney v. Wilber, 421 U.S. 684, 698 (1975)(punishment - degree of criminal culpability)); Stanford v. Kentucky, 492 U.S. 361, 379-380 (1989)(proportionate analysis - defendants [individual]

blameworthiness [culpability]); See, Matter of Yamashita, 327 U.S. 1, 28 (1946)(punishment cannot disregard the element of personal culpability)(etc' etc' etc')

WHEREFORE the above probative value of the FACTS and [USSC] LAW cited herein by Petitioner Barker and the California Parole Authorities violation of his Constitutional rights - Eighth Amendment - Fourteenth Amendment - Res Judicata - Law of the Case Doctrines - Petitioner Barker respectfully requests this Court grant review - grant the writ - order Petitioner Barker released from prison immediately without any parole term to serve.

COLLATERAL UNITED STATES CONSTITUTIONAL VIOLATIONS
OF PETITIONER BARKER'S RIGHTS IN SUPPORT OF THE
CLAIM I. - CONSTITUTIONAL PROPORTIONATE PUNISHMENT

A. UNITED STATES CONSTITUTION - EX POST FACTO CLAUSE
Art. I, § 9, cl. 3; Art. I § 10

The United States Constitutional guarantee against STATES "ex post facto laws, forbids -- every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed," (Peugh v. United States, 186 L.Ed.2d 84, 93 (2013)(citing Calder v. Bull, 3 Dall. 386, 390 (1798))) "this includes sentencing guidelines -- where broad discretion of parole officers had led to significant sentencing [punishment] disparities among similarly situated offenders." (id., 186 L.Ed.2d at 94(citing Mistretta v. United States, 488 U.S. 361, 362, 366-367 (1989))) This has occurred in the instant case.

The Court has held: " . . . where sentencing guidelines [parole laws] ran afoul of the 6th Amendment by allowing judges [California Parole Authority here] to find facts that increased the penalty for a crime beyond the maximum authorized by the facts" (id., at 94-95(citing United States v. Booker, 543 U.S. 200, 244 (2005); Apprendi v. New Jersey, 530 U.S. 466, 490 (2000)) See, Beckles v. United States, 197 L.Ed.2d 145, 155 (2017)(retrospective increase in [punishment] parole guidelines range applicable to a defendant violates the ex post facto clause)

The 1976 suitability parole laws and all California parole laws forward, substantially altered the consequences attached to the crime already completed and therefore changed "the Quantum of Punishment" for Petitioner Barker. (Weaver v. Florida, 450 U.S. 24, 33 (1981))

The California Parole Authority has failed to adhere to the United States Constitution's Ex Post Facto Clause [for decades], as held by the United States Supreme Court's precedent/controlling case law, by retroactively applying more onerous parole laws to Petitioner Barker's parole hearings, which has inflicted a greater punishment on him, than annexed to the crime in 1975. In the California parole context, Petitioner Barker [and his crime partner - MORAN] was incarcerated within the prison system in 1975 on the current 1971 offense and was benefited by the California Supreme Court's decision - In re Rodriguez (1975) 14 Cal.3d 639, 652-654:

In re Park (1976) 63 Cal.App.3d 963, 965: "In re Rodriguez — That decision was filed June 30, 1975. The Rodriguez decision requires the Adult Authority promptly to FIX [all 40,000 inmates & parolees] a prisoner's term within the statutory range; the term so fixed must be constitutionally proportionate to the culpability of the individual offenders; the term (called primary term) must reflect only those circumstances existing at the time of the offense and may not reflect the in-prison attitude or conduct of the inmate. Once the primary term is fixed, the Adult Authority may reduce it upon showing of good conduct & rehabilitation effort; if the inmate engages in negative conduct, the Adult Authority may refix the reduced term up to the primary term, but may not extend the primary term up to the statutory maximum." (citing In re Rodriguez (1975) 14 Cal.3d at 652-654)

Following, Rodriguez, the Adult Authority embarked upon the process of establishing primary terms for (all 40,000) for thousands of prison inmates (& parolees) . . . (id., 63 Cal.App.3d at 965(citing In re Williams (1975) 53 Cal.App.3d 10))

In re William (1975) 53 Cal.App.3d 10, 13: "The Adult Authority avers that it is 'diligently seeking to set the [primary] TERMS of ALL prisoners in custody of the CDC in accordance with the recent California Supreme Court decision in In re Rodriguez (1975) 14 Cal.3d 639 and that [it] has formulated a COMPREHENSIVE PLAN for the organized and speedy fixing of ALL [primary] TERMS fn 3"

William at 14: "The Adult Authority policy is set forth in its Directive 75/30, effective September 2, 1975 (APPENDIX F - herein) The procedures for TERM FIXING are established therein. The range in years within which the primary term for each of the more common felony offenses should ordinarily be set is suggested. (Appendix F at 10[first degree murder - 96 months to 156 months])

Williams at 18-19: "Rodriguez [] decision, effected a "substantial amendment" of the ISL (Indeterminate Sentencing Law). In re Rodriguez, 14 Cal.3d at 659. ¶¶ Under the compulsion of [] Rodriguez, the Adult Authority must now review and FIX [refix] the TERMS of thousands (all 40,000 prisoner & parolees within the CDC) of convicted felons under its jurisdiction. This must be accomplished under an ISL "substantial restructured" by [] Rodriguez to substitute an element of rigidity for the flexibility formly thought to exist. While flexibility remains further to reduce a PRIMARY TERM to acknowledge an inmates progress towards rehabilitation, the converse in no longer true, the Adult Authority have NOW been denied the authority to increase a primary term up to the legal statutory maximum term . . . the Adult Authority must expeditiously set all 40,000 inmate's (& parolees) primary terms by September 1, 1976, fn 3"

Williams at fn 3: "Sworn Declaration of R.K. PROCUNIER, Adult Authority Chairman" — . . . implementing the California Supreme Court's decision in Rodriguez as quickly as possible . . ."

¶ 6: "A schedule is being developed to move expeditiously to hear approximately 40,000 [inmate & parolee] under the Adult Authority

jurisdiction as quickly as possible . ."

¶¶: "PRIMARY TERMS will be fixed beginning September 2, 1975 . . ."

¶¶: "We hope to have set PRIMARY TERMS for ALL inmate's . . by September 1, 1976."

The above "substantial amendment" and "substantial restructured" California parole laws by the California Supreme Court in 1975 in In re Rodriguez (1975) 14 Cal.3d 639 and the Adult Authority Chairman's Directive No. 75/30 - Implementation of In re Rodriguez (September 2, 1975) were the California parole laws controlling Petitioner Barker's [and his crime partner's - MORAN] release on parole. (Appendix F)

Rodriguez mandated "Petitioner Barker be SET/FIXED a primary term to serve constitutionally proportionate to his individual culpability in the murder of Charlie Baker . . . that mandatory primary term once fixed could NOT be refixed upwards for any reason . . . that primary term could NOT be based upon his conduct subsequent to the offense - i.e. - institutional conduct - prison disciplinaries - present psychiatric condition ,, but only on his individual culpability in the offense & his past history." (Appendix F at 2 ¶ IV. & 1&2) These are the only parole laws that control Petitioner Barker's release on parole - the parole laws at the TIME [1975] of his conviction & sentence.

There can be no doubt, this Court's case law demands, when prisoner challenge's the two (2) statutory procedures as to federal ex post facto claims in parole procedures, its mandatory, that

both of those parole procedures must be compared "in toto," to determine if the new [parole procedures] may be fairly characterized as more onerous." (Dobbert v. Florida, 432 U.S. 282, 294 (1977))

Hence Petitioner Barker presents [now] the more onerous parole laws that have been retroactively applied to every parole hearing he has been given since 1981 [his first parole hearing for release on parole - through his 2017 hearing & will be applied to every parole hearing he receives]:

The year (1976) after the implementation of In re Rodriguez [1975] and Chairman's Directive No 75/30 (1975), it is born-out, the California Legislature passed the Determinate Sentencing Law (DSL) where release on parole was [then] ultimately determined by the parole authority's 'subjective assessment' of the prisoner's suitability for parole - i.e. - if the parole authority made a subjective determination of the prisoner's "current risk of danger to the public if released on parole," the prisoner rehabilitation while in prison - the prisoner's disciplinary record in prison - the prisoner's psychological risk assessment of danger/violence - codifying for the first time "new more onerous parole laws [suitability - danger to public - in prison conduct] - in direct opposite to the "parole laws" in 1975 Rodriguez & Directive No. 75/30. (Cal.Code Regs., title 15 §§ 2280 et al. - 1976)

In 1977 the DSL was intended to target the widely acknowledged and criticized abuses of the ISL regime PRIOR to the "substantial amendments & substantial restructured" Rodriguez & Directive 75/30 parole laws. The very nature of the DSL and its vastly different goals soon became obvious, when in 1977 the 'mandatory federally protected constitutional proportionate punishment based on the offenders individual culpability in the offense,' as held in Rodriguez & Directive 75/30, started to disappear. (Clean-up Bill AB 476, Stats. 1977, ch 165 at 639-680; Cal.Code Regs. title 15 § 2280 et al. - 1977)

----- In 1978, in a continuing pattern and perpetuating the disassembling and dismember Petitioner Barker's guaranteed [Rodriguez & Directive 75/30 parole laws - mandatory primary term must be fixed to serve] of his 'Constitutional Proportionate Punishment based on his individual culpability (Rodriguez) primary term to serve,' the parole authority [& California Attorney General's Office] - unauthorized and unprompted by the Legislature - systematically whittled away the parole protections established by Rodriguez and earlier-on DSL tenets. (Reg. 78, No. 31, p. 330(Aug. 8, 1978; Cal.Code Regs. title 15 § 2280 et al. - 1978)

These two (1977-1978) new more onerous parole regulations started the legions of new more onerous parole regulations, until the problem of disproportionate punishment [Rodriguez/Directive 75/30], which the DSL was designed to cure, has reappeared with a vengeance.

In 1979, the California Supreme Court's Rodriguez constitutional command for "must fix a primary term," for Petitioner Barker, as to the proportionate punishment based on his individual culpability in the offense [for every LIFER within CDC in 1975], was completely/totally dismantled by two Deputy Attorney General's in association with the parole authority, without Legislative in-put, by "rendering Rodriguez obsolete." (Appendix H - Memo August 22, 1979 & Memo July 26, 1979 at 3 "Rodriguez is no longer applicable - rendered obsolete")

As one Court put it: "We are not aware of any official explanation for the CRB's [parole authority 1979] departure from the practice mandate by Rodriguez for life prisoners after the enactment of the DSL. A post-hoc explanation, however, may be found in a memorandum sent by the Office of the Attorney General to all criminal deputies on August 22 (Appendix H), 1979, but never made formally available to the public, concerning then newly-enacted sentences for first degree and second degree murder ... the Attorney General took the position that because the parole authority no longer had the power to fix terms, Rodriguez, had been rendered "obsolete." (citing in In re Riley (2014) 226 Cal.App.4th 535, 574 fn 27(persuasive law - Cal. parole system))

In re Riley, 226 Cal.App.4th at 574 fn 27: "The memorandum stated, "In re Rodriguez (1975) 14 Cal.3d 639, also appears to have been rendered obsolete by the change structure of the life sentence. In Rodriguez, the California Supreme Court placed the burden on the parole board to set a prisoner's 'primary term' quickly and without regard to any post-conviction behavior. This 'primary term' established the outer limit of the prison system's jurisdiction over the prisoner. The basis for the Rodriguez decision lay in the judicial branch's obligation to examine terms, as fixed by the parole board, to determine whether they were cruel or unusual. In light of the fact that the CRB has no term fixing power Rodriguez is no longer applicable."

Of course, the Morrissey 8 Memo's (Appendix H) "legal conclusion's" are utterly baseless. The Morrissey Memo acknowledged the Board's obligation (under Rodriguez) to set maximum primary terms for indeterminate sentenced inmates (all inmates) in 1975. However, once the 1979 Memo's were proffered by the Attorney General's Office, all parole hearings thereafter refused to apply the mandatory parole laws of Rodriguez (1975) to Petitioner Barker's parole hearings .. starting in 1981 through today ..

Thus this Court's mandatory requirement that it "must compare the two statutory procedures "in toto" to determine if the new

(1976 - forward parole laws) may be fairly characterized as more onerous" (id., 432 U.S. at 294) Petitioner Barker has present the above comparison of the 1975 Rodriguez/Directive 75/30 "mandatory must fix Petitioner Barker's primary maximum term to serve" constitutionally proportionate to his individual culpability in the offense and his term to serve must be tailored to his individual culpability in the crime." (In re Rodriguez (1975) 14 Cal.3d 639, 650-653; Edmund v. Florida, 458 U.S. 782, 801 (1982))

The following plethora of California Supreme Court and California District Courts of Appeal, have each up-held Rodriguez parole laws of 1975 -- for the prisoner's who were incarcerated within CDC in 1975, but have held Rodriguez parole laws in 1975 are not applicable to life-term prisoners sentence after 1975 under the DSL. fn 2

fn 2: In re Rodriguez (Cal. 1975) 14 Cal.3d 639, 650-654; People v. Wingo (Cal. 1975) 14 Cal.3d 169, 183; In re Williams (1975) 53 Cal.App.3d 10, 13, 18-19 fn 3: In re Park (1976) 63 Cal.App.3d 963, 965; People v. Enriquez (Cal. 1997) 19 Cal.3d 221, 230; In re Rogers (Cal. 1980) 28 Cal.3d 429, 435-436; In re Colley (1980) 113 Cal.App.3d 870, 873; In re Neal (1980) 114 Cal.App.3d 141, 144-145; People v. Scott (1984) 150 Cal.App. 910, 919; People v. Gonzales (1989) 208 Cal.App.3d 1170, 1172-1173; People v. Lane (1989) 217 Cal.App.3d Supp.7, 8; In re Dannenberg (Cal. 2005) 34 Cal.4th 1061, 1096-1097; In re Roberts (Cal. 2005) 36 Cal.4th 575, 588 fn7; In re Morganti (2012) 204 Cal.App.4th 904, 939; In re Stoneroad (2013) 215 Cal.App.4th 596, 617; In re Riley (2105) 236 Cal.App.4th 535, 569-571; In re Butler (2015) 236 Cal.App.4th 1222, 1240-1241; In re Palmer (2017) 13 Cal.App.5th 795, 820-823; [even] In re Butler (Cal. 2018) 4 Cal.5th 728, 744-447(up-holding Rodriguez/Directive 75/30 indeterminate sentenced (ISL) prisoner's within CDC in 1975)

The most obvious comparison between the two California parole laws, has been held in the above California Supreme Court case law cited in Dannenberg and Butler, is that those Courts found that Rodriguez/Directive 75/30 does not apply to LIFE-TERM prisoner's who were sentence under the new DSL, but their 'rational inference' for up-holding the Rodriguez/Directive 75/30 for LIFE-TERM prisoner's in 1975 -- its still good law. Hence Petitioner Barker is/has been entitled to have his parole hearings held under the 1975 Rodriguez/Directive 75/30 parole laws ..

It is undisputable, that the newer parole laws (1976-forward) are in total opposite of the mandatory Rodriguez/Directive 75/30 of 1975 - summary:

Rodriguez mandated Petitioner Barker be set a primary term to serve - constitutionally proportionate base on his individual culpability in the offense without consideration of any conduct subsequent to the offense; where the newer parole laws (1976 - forward) allows the parole authority to make subjective assessments of the prisoner's conduct in prison and a further subjective assessment of the prisoners current dangerousness to the public --- there can be no doubt in this Court's "in toto" comparison of the two statutory procedures, that the newer parole laws (1976-forward) can be fairly characterized as more onerous to Petitioner Barker, as he has served 44 years to date under the new more onerous parole laws (1976 - forward), where he would have served approximately 10 years under Rodriguez/Directive 75/30. (Appendix I - Amicus Brief - In re Butler (Cal. 2018) 4 Cal.5th 728 - USC May 30, 2017 [comprehensive information Rodriguez/Directive 75/30 vs. 1976 - forward new more onerous parole laws in California - for this Court's convenience])

The California Parole Authority has violated Petitioner Barker's rights secured under the United States Constitution - Ex Post Facto Clause (In re Stanworth (Cal. 1982) 33 Cal.3d 176, 188("ISL vs. DSL - we have concluded that the standard of

punishment has been altered to defendant's prejudice in violation of ex post facto principles")), by retroactively holding his parole hearings under the more onerous parole laws (1976 - forward Cal.Code Regs., title 15 § 2280 et al.), which has caused the infliction of greater punishment on him, then under the Rodriguez 1975 parole laws.

B. UNITED STATES CONSTITUTION - EQUAL PROTECTION CLAUSE
FOURTEENTH AMENDMENT

Directing the Courts attention, that [today] the California Supreme Court and California Legislature (yet again) changing the 'parole laws,' this time "denying LIFE-TERM prisoners Equal Protection rights at their parole hearings. The California Legislature excised the language from former [Cal.Pen. Code] section 3041(a) [parole laws] requiring the Board to set parolees' release dates "in a manner that would provide uniform terms for offenses of similar gravity and the magnitude with respect of their threat to the public." (Senate Bill No. 230 in 2015 (Stats. 2015, ch. 470))(In re Butler (Cal. 2018) 4 Cal.5th 728, 737).

California parole hearings no longer recognize the LIFE-TERM prisoner's Equal Protection rights in State parole laws, but Petitioner Barker contends, his federal Equal Protection rights secured by the United States Constitution - Fourteenth Amendment cannot be taken away from him, through State unconstitutional 'parole laws' or 'up-held by its Supreme court. The reason for this Writ of Certiorari. (See, REASONS FOR GRANTING THE PETITION

I. & II. - correct States High Court's recent decision - ante.)

1. Yick Wo v. Hopkins, 118 U.S. 356, 367 (1886) holds "when the law lays an unequal hand on those who have committed intrinsically [essential] the same quality of offense and sterilizes one and not the other, it has made as invidious [hatred] a DISCRIMINATION as if it had selected a particular race, nationality [individual] for oppressive treatment." (See Also, Missouri Ex Rel., Gaines v. Canada, 306 U.S. 337, 350 (1938); Skinner v. Oklahoma ex rel., Williams, 316 U.S. 535, 541 (1942); DeShangey v. Winnebago Social Services, 489 U.S. 189, 197 fn 3 (1989); Romer v. Evans, 517 U.S. 620, 633-634 (1996))

The California Parole Authority continued [for decades] the inexplicable rejection of Petitioner Barker's compulsory Equal Protection guarantee's (U.S.Const. 14th Amend.) by ignoring the irrefutable FACTS in this case: (1) that Petitioner Barker and his crime-partner [WILLIAM MORAN, B-48420] were arrested for, convicted of and sentenced to First Degree Murder for the 1971 (48 years ago) murder of the biker Charlie Baker in the exact same offense; (2) Moran [the actual killer] had his Constitutional Proportionate Punishment for his individual culpability in the murder of Charlie Baker 'fixed/set' in 1978 (under Rodriguez parole laws in 1975) at "Eleven (11) Years incarceration and a Three (3) Year parole term to serve"; (3) to-date, Petitioner Barker has been forced to serve the constitutionally excessive punishment of Forth Four (44) Years

incarceration for his individual culpability as being the 'aider & abettor' in the murder of Charlie Baker, in violation of his United States Constitutional guarantee of Equal Protection rights as held in Yick Wo.

2. Petitioner Barker [further] alleges that he has been (1) intentionally treated differently from others similarly situated, and (2) that there was no rational basis for the difference in treatment. (See, Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000)(our cases have recognized successful Equal Protection claims brought by a "CLASS OF ONE")(Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445 (1923); See Also, Allegheny Pittsburgh Coal Co. v. Commission of Webster County, 488 U.S. 336, 345 (1989); Engquist v. Oregon Dept. of Agriculture, 553 U.S. 591, 596, 601-602 (2008)(up-holding "CLASS OF ONE" Equal Protection claims - exemption public employee's)

The inconsistency of the California Parole Authorities between Petitioner Barker's release on parole and his crime-partner's time to serve and the other 40,000 prisoners & parolee's in 1975 who were "fixed/set their primary terms constitutionally proportionate to serve based on their individual culpability in the offense," is intentional treating Petitioner Barker differently from those similarly situated prisoners and the California parole Authority has not presented a rational basis for the difference in treatment in violation of Petitioner Barker's rights guaranteed under this Court's Equal Protection - "CLASS OF ONE" rights.

WHEREFORE, the reasons set forth above, the records & files in this case, Petitioner Barker respectfully requests this Court (1) grant review of this serious Constitutional Claim, (2) appoint counsel to represent Petitioner Barker, (3) grant the Writ, (4) order Petitioner Barker immediately released from prison with no parole term to serve.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard A. Barker

Richard A. Barker

Date: September 16, 2018

CERTIFICATION OF COMPLIANCE

Pursuant to USSC Rule 33(b), Petitioner Barker's instant Writ page limit is less than 40 pages; further he has complied with applicable USSC Rule 39 (proceeding In Forma Pauperis); and USSC Rule 39(2)(an inmate confined in an institution and not represented by counsel, proffers the ORIGINAL Writ); and USSC Rule 29(4)(c)("shall be served on the Attorney General of the State of California)

To the best of Petitioner Barker's knowledge, he has complied with all pertinent USSC Rules in the production and filing of this Writ of Certiorari on September 16, 2018.

Respectfully submitted,



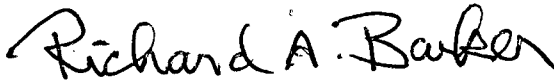
Richard A. Barker
B-65996 Petitioner
In Propria Persona
In Forma Pauperis

DECLARATION BY RICHARD A. BARKER

I, Richard A. Barker, petitioner in the above Petition of Writ of Certiorari, state and declare, under 28 U.S.C. § 1746, that I produced the above Writ and the facts and law stated therein, are of my own personal knowledge and are true and correct, except as to those matters plead on information and belief, but as to those matters, I believe them to be true.

Further, APPENDIX A through I attached hereto this Writ are true and correct copies of the original documents plead herein.

Executed on September 16, 2018, at California Men's Colony State Prison, San Luis Obispo, California.



Richard A. Barker
B-65996 Petitioner
In Propria Persona
In Forma Pauperis