

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE RODRIGUEZ — PETITIONER
(Your Name)

vs.

DANIEL PARAMO, WARDEN, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eastern District of California Fresno
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSE RODRIGUEZ
(Your Name)

480 Alta road
(Address)

SAN DIEGO, CALIFORNIA 92179
(City, State, Zip Code)

N / A
(Phone Number)

QUESTION(S) PRESENTED

1. Allege "INSUFFICIENT EVIDENCE" is FEDERAL QUESTION, Petitioner Mr. JOSE RODRIGUEZ, is not the PRINCIPAL Jury Instructions for count one and two, P.C. § 187(a), is not in the record to support the verdict of FIRST DEGREE MURDER.

2. Allege "NOT TRUE" unanimous jury finding for P.C. § 186.22(b); § 186.22(A); § 190.2(a)(22), is contrary to the law in effect at the time. Sentence term of 82 years to LIFE. P.C. § 12022.53(d), provides 50 YEARS TO BE REMOVED. Allege LIFE also to be removed. Allege in conflict to APPENDI V. N.J., 530 U.S. 466, 490 (2000)

3. Allege "HARMLESS ERROR" is "NONEXISTANT" from the record in conflict to BRECHT V. ABRAHAMSON, SUPRA, 507 U.S. 619; FRY V. PLILER, (2007) 551 U.S. 112, 168 L. Ed. 2d. 16, 127 S.Ct. 2321.

4. Allege "ELEMENTS" in conflict to IN RE WINSHIP, 397 U.S. at pp. 364 [90 S.Ct. 1068, 15 L.Ed. 2d. 368]; JACKSON V. VIRGINIA, SUPRA, 443 U.S. at pp. 318 [99 S.Ct. 2781, 61 L.Ed. 2d. 560]; U.S. V. GAUDIN, (1995) 515 U.S. 506, ----, 115 S.Ct. 2310, 2320, 132 L.Ed. 2d. 444.

5. Allege JURY INSTRUCTIONS is in conflict to DUE PROCESS CLAUSE; U.S. CONSTITUTION FIFTH AMENDMENT; IN RE WINSHIP, 397 U.S. 358, 364 (1970); U.S. V. O'BRIEN, 130 S.Ct. 2169, 2174 (2010); IN JOSEPH V. COYLE, 469 F.3d. 441, 464-65 (6th Cir. 2006); U.S. V. CHIANIESE, 550 F.2d. 1244, 1255

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3 6. Allege "REASONABLE DOUBT" distinguishing between
4 ween "[S]entencing factors" and "[E]lements of a crime
5 [that] must be charged in an indictment and proved to a
6 jury beyond a reasonable doubt, is in conflict to WINSHIP
7 397 U.S. 358,364; SULLIVAN V. LA.,508 U.S.275,278(1993);
8 CAGE V. LA.,498 U.S.39,41(1990); FRANCIS V. FRANKLIN,
9 471 U.S.307,317(1985); JACKSON V. VIRGINIA,443 U.S.at
10 312-324.

11 7. Allege "INEFFECTIVE ASSISTANCE OF COUNSEL" is in
12 conflict to : U.S. CONSTITUTION SIXTH AMENDMENT; FOURT-
13 EENTH AMENDMENT; STRICKLAND V. WASHINGTON,466 U.S.668,
14 687-88(1984); HARRINGTON V. RICHTER,131 S.Ct.770(2011);
15 CULLEN V. PINHOLSTER, 131 S.Ct.1388(2011)

16 8. Allege district court "ABUSE OF DISCRETION" dis-
17 missed a claim on a procedural ground without providing
18 the petitioner an opportunity to develop its factual
19 or legal basis through an evidentiary hearing in conflict
20 to this courts holding in: LAMBRIGHT V. STEWART, SUPRA,
21 220 F.3d.1022,1026(9th.Cir.2000).

22 9. Allege district court "ABUSE OF DISCRTION" in
23 unreasonable deference anaylsis the record i§ undisputed
24 presumption of correctness does not apply if the state
25 court did not render a factual finding, either express
26 or implied in conflict to: TOWNSEND V. SAIN,372 U.S.
27 293, 320, 83 s. Ct. 745, 9 L.Ed.2d. 770(1963); DUE PRO-
28 CESS AND FUNDAMENTAL FAIRNESS; U.S. CONSTITUTION FOUR-
TEENTH AMENDMENT.

LIST OF PARTIES

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

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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

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

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

☒ For cases from **state courts**:

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

☒ reported at January 28, 2015 5223370; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was APPENDIX "C" August 30, 2019 NO. 18-15683

☐ 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 January 28, 2015.
A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Instructions
PLEASE SEE APPENDIX

"D"

UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

"E"

UNITED STATES COURT EASTERN DISTRICT FOR
CALIFORNIA

STATEMENT OF THE CASE

As the record shows on May 13, 2010, Petitioner Mr. Jose Rodriguez and two men, Michael Torres and Joseph Sanchez, drove to a store in McFarland, California to buy beer for a bar-b-que. Petitioner and Sanchez remained in the car while Torres entered the store to purchase beer.

Several people, including Michael Ramirez (Based on the trial testimony, Ramirez **started the fight for gang purpose (PRINCIPAL)**, alone against three unknown to himself) were in the parking lot of the store when Petitioner, Torres, and Sanchez pulled into the parking lot.

Petitioner Mr. Jose Rodriguez, jury trial began on October 01, 2012, at Trial, Petitioner's Counsel objected to the Court Instructing the jury pursuant to California Criminal Jury Instruction (CalCrim) 521 for drive-by-murder.

It is allege "UNDISPUTED" MR. BELLEZA SANTOS III, has no connection other than being a innocent bystander, (ACTUAL MURDER VICTIM).

Petitioner Mr. Jose Rodriguez was charged with (1) First Degree Murder (Cal.P.C. § 187(a)); (2) Premeditated Attempted Murder (Cal.P.C. § 664; § 187(a), § 189; and (3) Street Terrorism (Cal.P.C. § 186.22(b)(1); Count (1) contained enhancement (Cal.P.C. § 190.2(a)(22); Counts (1) & (2) contained enhancements (Cal.P.C. § 12022.53(d) & Cal.P.C. § 186.22(b)(1)

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3 On October 5, 2012, The Jury found Petitioner Mr.
4 Jose Rodriguez, guilty of (1) First Degree Murder (Cal.
5 P.C. § 187(a), Mr. BELLEZA SANTOS III, (bystander); and
6 (2) Premeditated Attempted Murder (Cal.P.C. § 664; §187(a);
7 (§ 189), Michael Ramirez (Allege ACTUAL PRINCIPAL WHO
8 STARTED THE FIGHT).

9 The jury did not find the enhancement to Count 1,
10 alleging that the murder was carried out to further the
11 activities of a criminal street gang (Cal.P.C. § 190.2(a)
12 (22), to be true, NOR that Counts 1 and 2 were committed
13 for the benefit of a criminal street gang (Cal.P.C. §186.22
14 (b)(1), Finally, the jury found Petitioner NOT GUILTY
15 of street Terrorism (Cal.P.C. § 186.22(A).

16 On November 5, 2012, the Court sentenced Petitioner
17 Mr. Jose Rodriguez, to a total prison term of 82 years
18 to LIFE. For count 1, 25 years to life for First Degree
19 Murder plus an additional 25 years to Life for the gun
20 allegation. For count 2, Premeditated Attempted Murder,
21 7 years to LIFE plus consecutive 25 years to LIFE for the
22 gun allegation.

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STATEMENT OF FACTS ALLEGED ON HABEAS CORPUS

GROUND ONE: INSUFFICIENT OF EVIDENCE (ELEMENTS)

GROUND TWO: JURY INSTRUCTIONS

GROUND THREE: INEFFECTIVE ASSISTANCE OF COUNSEL

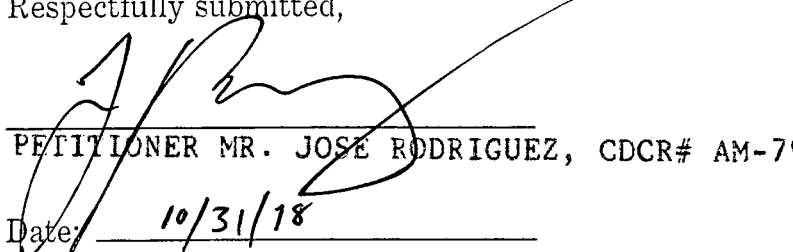
REASONS FOR GRANTING THE PETITION

1. Allege after review Legality of the term SENTENCED can not be presumed from a fact that does not exist from the law in effect at the time.
2. Allege absence of BURDEN OF PROOF CAL.P.C. 189.5(a) "CAGE ERROR" invalidates the conviction, consistent with CAGE V. LA., 498 U.S. 41 (1990).
3. Allege remand to district Court for Evidentiary hearing.
4. Allege Grant any other relief as appropriate in the INTEREST OF LAW AND JUSTICE REQUIRE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



PETITIONER MR. JOSE RODRIGUEZ, CDCR# AM-7949

Date: 10/31/18