

No. _____

IN THE
Supreme Court of the United States

JUAN BOSCO ALVAREZ,

Petitioner,

v.

DEBBIE ASUNCION,

Respondent

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

HILARY POTASHNER
Federal Public Defender
LAUREN COLLINS*
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012-4202
Telephone: (213) 894-3806
Facsimile: (213) 894-0310
Lauren_Collins @fd.org

Attorneys for Petitioner
Juan Bosco Alvarez
**Counsel of Record*

QUESTION PRESENTED

In *Brumfield v. Cain*, 135 S. Ct. 2269, 2276, 2282 (2015), this Court made clear that 28 U.S.C § 2254(d)(2) is satisfied when a state court denies an evidentiary hearing where the petitioner's allegations and evidence on his constitutional claim are sufficient to obtain a hearing under state law. Does a federal habeas court contravene this Court's precedent when it evaluates the merits of a petitioner's claim without regard for the state court's rules for evaluating habeas petitions?

TABLE OF CONTENTS

	Page(s)
QUESTION PRESENTED	1
PETITION FOR A WRIT OF CERTIORARI	1
I. OPINIONS BELOW.....	1
II. JURISDICTION.....	1
III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
A. 28 U.S.C. § 2254 (a)(d)	2
B. United States Constitution, Fourteenth Amendment	2
IV. STATEMENT OF THE CASE.....	3
A. Trial	3
B. Direct appeal and initial state habeas proceedings	4
C. Federal habeas and state exhaustion proceedings	4
D. The Ninth Circuit.....	6
V. REASONS FOR GRANTING THE WRIT.....	7
A. AEDPA standards	8
B. The California Supreme Court’s denial of Alvarez’s claims was based on an unreasonable factual determination.....	9
1. Legal standards	9
2. Alvarez set forth a prima facie case of a constitutional violation and should have been granted a hearing.....	9
C. The Ninth Circuit’s decision contradicted this Court’s precedents.....	11
VI. CONCLUSION.....	13
CERTIFICATE OF WORD COUNT	14
CERTIFICATE OF SERVICE.....	15

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Atkins v. Virginia</i> , 536 U.S. 304 (2002)	12
<i>Bemore v. Chappell</i> , 788 F.3d 1151 (9th Cir. 2015)	12
<i>Brumfield v. Cain</i> , 135 S. Ct. 2269 (2015)	<i>passim</i>
<i>Cooper v. Oklahoma</i> , 517 U.S. 348 (1996)	9
<i>Cullen v. Pinholster</i> , 563 U.S. 170 (2011)	7, 10
<i>Droepe v. Missouri</i> , 420 U.S. 164 (1975)	7, 9
<i>Dusky v. United States</i> , 362 U.S. 402 (1960)	7
<i>Godinez v. Moran</i> , 509 U.S. 389 (1993)	9
<i>Harrington v. Richter</i> , 562 U.S. 86 (2011)	8, 11
<i>Lindh v. Murphy</i> , 521 U.S. 320 (1997)	8
<i>Medina v. California</i> , 505 U.S. 437 (1992)	9
<i>Panetti v. Quarterman</i> , 551 U.S. 930 (2007)	8
<i>Pate v. Robinson</i> , 383 U.S. 375 (1966)	7, 9
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	7, 9

TABLE OF AUTHORITIES

	Page(s)
<i>Wiggins v. Smith</i> , 539 U.S. 510 (2003)	8, 9
State Cases	
<i>In re Lawler</i> , 23 Cal. 3d 190 (1979).....	10
<i>People v. Duvall</i> , 9 Cal. 4th 464 (1995)	10
<i>People v. Ledesma</i> , 43 Cal. 3d 171 (1987).....	10
<i>People v. Romero</i> , 8 Cal. 4th 728 (1994)	7, 10
Rules and Statutes	
28 U.S.C. § 1254.....	2
28 U.S.C. § 2254.....	<i>passim</i>
18 U.S.C. § 3006A(b).....	1
Cal. R. Ct. 8.385(d).....	10

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Juan Bosco Alvarez petitions for a writ of certiorari to review the final order and memorandum opinion of the United States Court of Appeals for the Ninth Circuit in this case and the judgment denying him habeas corpus relief.

I. OPINIONS BELOW

The Ninth Circuit Court of Appeal's unpublished memorandum disposition in case number 17-55360 is appended to this petition. (Petitioner's Appendix ("Pet. App.") 1-4.) The district court adopted the Report and Recommendation of the magistrate judge denying his claims, dismissed Alvarez's petition with prejudice and entered judgment against him. (Pet. App. 5-25.) The relevant state court decision under 28 U.S.C. § 2254(d) is the California Supreme Court's silent denial in state habeas case number S219891, which is attached. (Pet. App. 26.) Alvarez also filed petitions for writ of habeas corpus in the Superior Court of Los Angeles County, California, and the California Court of Appeal. Both were denied and the denials are attached. (Pet. App. 27-29.)

II. JURISDICTION

On December 14, 2018, in *Juan Bosco Alvarez v. Debbie Asuncion*, the Ninth Circuit affirmed the district court's denial of Alvarez's 28 U.S.C. § 2254 habeas corpus petition challenging his conviction and sentence by the California state court. (Pet.

App. 1-4.) This petition is timely filed within 90 days after the entry of judgment. *See* Sup. Ct. R. 13. This Court has jurisdiction under 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. 28 U.S.C. § 2254 (a)(d)

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) 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; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

B. United States Constitution, Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IV. STATEMENT OF THE CASE

A. Trial

On December 10, 2002, after a jury trial, Alvarez was found guilty of attempted murder, assault with a firearm and evading arrest with reckless disregard for safety. (Pet. App. 67-81.) The jury also found that Alvarez acted willfully, deliberately and with premeditation, and personally used a firearm, causing great bodily injury. (Pet. App. 78.) He was sentenced to life in prison and a consecutive term of twenty-five years to life for the use of a firearm. (Pet. App. 65-66.)

Some facts at the time of trial suggested Alvarez's illness and odd behavior. A July 2002 probation report indicated that Alvarez “[h]as some mental deficiency that needs to be addressed in a closed setting.” (Pet. App. 48.)

Counsel told the jury that Alvarez “suffers from a nervous condition that makes him jittery and makes him react more nervously than a normal human being would.” (Pet. App. 50.)

A neighbor testified that he told the prosecution investigator that Alvarez was “cuckoo.” (Pet. App. 52.) Another witness told a prosecution investigator that Alvarez was “quirky.” (Pet. App. 60.)

Alvarez testified that he suffers from hyperthyroidism, which causes insomnia, nervous system failure and hyperactivity. (Pet. App. 54.) He didn’t drink beer because of it. (Pet. App. 55-57.) Alvarez testified that he “can’t be still,” and “ha[s] to be constantly moving around.” (Pet. App. 58.)

In closing argument, counsel reiterated that Alvarez “moves a little bit weird and he’s a little nervous, but that’s whom [sic] he is.” (Pet. App. 64.) The district attorney noted that during his testimony, Alvarez “rambled at times.” (Pet. App. 62.)

At no time during trial did counsel request a competency evaluation, or did the trial court sua sponte order one. Nor did counsel request a mental health expert.

B. Direct appeal and initial state habeas proceedings

Alvarez appealed, and judgment was affirmed on December 19, 2003. (Pet. App. 30-33.) Between April 4, 2011 and February 22, 2012, Alvarez filed seven pro se state habeas petitions, which were each denied without discussion. (Docs. 19-20, Ldg. 6-18.)¹

C. Federal habeas and state exhaustion proceedings

Alvarez filed a federal habeas petition in district court on July 27, 2012, and the magistrate court appointed counsel. (Docs. 1, 6.) On June 27, 2013, Alvarez filed a First Amended Petition (“FAP”) alleging, *inter alia*, claims that he was mentally incompetent at the time of his trial and that his counsel was ineffective for failing to investigate his competency. (Docs. 33, 36, 41.)

On March 31, 2014, after extensive briefing, the magistrate court found that Alvarez’s mental impairments entitled him to equitable tolling of the federal statute of limitations. (Pet. App. 34-43.) The magistrate judge noted Alvarez’s long,

¹ “Doc.” refers to the district court docket, C.D. Cal. CV 12-7494-RGK (MRW). The parties lodged the underlying state-court documents in the court below. (*See* Doc. 19, 20, 101, 104, 115 and 116 (C.D. Cal. CV 12-7494-RGK (MRW).) “Ldg.” refers to documents lodged below.

documented history of severe mental health conditions and found that between 2004 and 2012, after his incarceration for the instant offense, he was “persistently delusional, forcibly medicated, and in and out of psychiatric institutions.” (Pet. App. 39.) The magistrate court found that Alvarez’s problems “were far from the run-of-the-mill psychological ailments that inmates typically suffer from,” and “[a] prisoner with Petitioner’s delusional and bizarre thought process and other behavioral problems- magnified by his educational and English-language limitations- could not possibly have filed a lucid habeas petition with this Court within AEDPA’s time limits.” (Pet. App. 41.) The magistrate court stayed the federal case pending state exhaustion proceedings. (Doc. 85.)

Alvarez filed three state habeas petitions in order to exhaust state remedies; all were denied. (Pet. App. 28-29 (Los Angeles Superior Court); Pet. App. 27 (California Court of Appeal); Pet. App. 26 (California Supreme Court).) After exhaustion proceedings concluded, Alvarez returned to federal court and the stay was lifted. (Doc. 95.)

In state and federal court, Alvarez presented evidence that he was incompetent at the time of trial. At that time and years after, Alvarez suffered from a severe, untreated form of thyroid disease which contributed to extreme psychotic symptoms and delusions. (*See* Pet. App. 12-13.) He alleged that these symptoms rendered him incapable of understanding the criminal proceedings and assisting in his defense. Alvarez supported his claims with medical records from shortly after trial, documenting years of illness, including psychiatric hospitalization and several years

of involuntary medication. (See Pet. App. 13.) He also submitted jail records showing that the thyroid condition, which causes or contributes to the illness, was manifested at the time of trial. (See Pet. App. 13.) Notably, Alvarez submitted an unrebutted expert declaration of forensic psychiatrist Dr. Nathan Lavid, concluding that he was indeed mentally incompetent at the time of trial. (Pet. App. 12-13.) Alvarez also submitted declarations from prior counsel who questioned his mental state. (Pet. App. 13.)²

Ultimately, the magistrate issued a report and recommendation (“R&R”) recommending denial of Alvarez’s claims on the merits. (Pet. App. 8-25.) The district court accepted the magistrate’s recommendations and entered judgment. (Pet. App. 5-7.)

D. The Ninth Circuit

The Ninth Circuit granted a Certificate of Appealability, and after briefing and oral argument, affirmed the district court’s denial in an unpublished memorandum dated December 14, 2018. (Pet. App. 1-4.)

As to the claim that Alvarez was actually incompetent, the Ninth Circuit found there was ample evidence in the record that Alvarez both understood the proceedings and had the present ability to consult with his lawyer. (Pet. App. 2.) The Ninth Circuit relied on statements by Alvarez’s lawyer that Alvarez participated in his own defense,

² Many of the supporting documents, including the expert and attorney declarations and voluminous medical records were filed under seal in federal court. Herein, Alvarez cites only to information that is publically available. If this Court grants certiorari, Alvarez intends to seek leave to file these additional records.

testified on his own behalf, identified an alibi witness, and also rejected a favorable plea deal after discussions. (Pet. App. 2.)

The Ninth Circuit relied on the same evidence to conclude that even if counsel's failure to investigate Alvarez's competency constituted deficient performance, it is not reasonably probable that the trial court would have found him incompetent had he raised the issue for the same reasons. (Pet. App. 3-4.)

In its memorandum, the Ninth Circuit addressed neither AEDPA standards nor the state court standards for issuing an order to show cause or granting an evidentiary hearing. (Pet. App. 3-4.)

V. REASONS FOR GRANTING THE WRIT

Alvarez, a habeas petitioner, presented evidence to the state court setting forth a *prima facie* case that 1) he was incompetent to stand trial under the constitutional standards set forth in *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam), *Droepe v. Missouri*, 420 U.S. 164 (1975), and *Pate v. Robinson*, 383 U.S. 375 (1966), and 2) his trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668, 687 (1984) for failing to investigate and declare a doubt as to his competency. The state court denied relief without a hearing. The Ninth Circuit affirmed the district court without addressing the question of whether the state court was reasonable in concluding that Alvarez had not established even a *prima facie* case of a constitutional violation. *Cullen v. Pinholster*, 563 U.S. 170, 189 n.12 (2011); *People v. Romero*, 8 Cal. 4th 728, 737 (1994). This decision contravenes controlling decisions of this Court interpreting 28 U.S.C. § 2254(d). *Brumfield v. Cain*, 135 S. Ct. 2269, 2282 (2015); *see* Sup. Ct. R. 10(c).

A. AEDPA standards

The AEDPA applies to this case because the petition was filed after April 24, 1996. *Lindh v. Murphy*, 521 U.S. 320, 336 (1997). Under AEDPA, a federal court may grant habeas relief if it determines that the petitioner suffered a violation of his federal constitutional rights and that he has satisfied 28 U.S.C. § 2254(d). *See* 28 U.S.C. § 2254(a), (d). Section 2254(d) is satisfied if the Court finds that the state court's adjudication of Alvarez's claims was either (1) contrary to or an unreasonable application of clearly established federal law as determined by the United States Supreme Court, or (2) was based on an unreasonable determination of the facts in light of the record that was before the state court. 28 U.S.C. § 2254(d).

When a federal habeas court concludes that this 2254(d) standard is met, it reviews the claim de novo in assessing whether the petitioner's constitutional rights were violated. *Panetti v. Quarterman*, 551 U.S. 930, 953 (2007). A petitioner is not required to satisfy both §§ 2254(d)(1) and 2254(d)(2). *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

Particularly, section 2254(d)(2) allows petitioners to challenge the state court's factual findings based upon evidence before the state court. *Wiggins v. Smith*, 539 U.S. 510, 528 (2003). In *Brumfield*, 135 S. Ct. at 2276, 2282, this Court made clear that § 2254(d)(2) is satisfied when a state court denies an evidentiary hearing where the petitioner's allegations and evidence on his constitutional claim are sufficient to obtain a hearing under state law.

B. The California Supreme Court's denial of Alvarez's claims was based on an unreasonable factual determination.

In state court, Alvarez alleged constitutional violations that are factually and legally related: 1) he was incompetent to stand trial, and 2) his trial counsel was ineffective for failing to investigate and declare a doubt as to his competency because if Alvarez had been evaluated, he would have been found incompetent to stand trial.

1. Legal standards

Due process prohibits the trial of an incompetent person. *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996); *Medina v. California*, 505 U.S. 437, 453 (1992); U.S.C.A. Const. Amend. 14. A criminal defendant is incompetent if he lacks “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational as well as factual understanding of the proceedings against him.” *Godinez v. Moran*, 509 U.S. 389, 396 (1993) (citing *Dusky*, 362 U.S. 402); *Drope*, 420 U.S. 164; *Pate*, 383 U.S. 375.

To prevail under *Strickland*'s two-pronged standard, a petitioner must show that his counsel's performance was deficient, and that the deficiency prejudiced his defense. *Wiggins v. Smith*, 539 U.S. 510, 521 (2003). To establish deficient performance, a petitioner must show that his counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. *Strickland*, 466 U.S. at 690.

2. Alvarez set forth a *prima facie* case of a constitutional violation and should have been granted a hearing.

By the California Supreme Court's own rules, the state court is charged with accepting a habeas petitioner's factual allegations as true and determining whether

they establish a *prima facie* case for relief. *People v. Romero*, 8 Cal. 4th 728, 737 (1994). A petition states a *prima facie* case for relief if its states facts which, if true, entitle the petitioner to relief. *Id.* A petitioner is not required to prove his claim at the pleading stage. *People v. Duvall*, 9 Cal. 4th 464, 474-75 (1995); *see Cullen v. Pinholster*, 563 U.S. 170, 188 n. 12 (2011) (“Under California law, the California Supreme Court’s summary denial of a habeas petition on the merits reflects that the court’s determination that ‘the claims made in th[e] petition do not state a *prima facie* case entitling the petitioner to relief.’ It appears that the court generally assumes the *allegations in the petition* to be true.”) (internal quotation marks and citations omitted) (alterations in the original). If, however, the court makes a preliminary determination that the petitioner has stated a *prima facie* case for relief, the court must issue an order to show cause and eventually may order an evidentiary hearing. *See* Cal. R. Ct. 8.385(d). A petitioner does not have an obligation to prove the facts in support of his claims until an order to show cause issues, at which point he must prove he is entitled to relief by a preponderance of the evidence. *See People v. Ledesma*, 43 Cal. 3d 171, 243 (1987) (Grodin, J., concurring); *In re Lawler*, 23 Cal. 3d 190, 195 (1979).

The facts presented to the state court, discussed above (*see* section IV.C), met and exceeded the low threshold for establishing a *prima facie* case under California law. Notably, Alvarez submitted an expert declaration concluding that he was incompetent at the time of trial, which was supported by voluminous medical records. For decades, Alvarez’s thyroid disease has contributed to symptoms such as

delusions, psychosis and hallucinations. These delusions, which ultimately required extensive psychiatric treatment, impaired his reality.

In light of these facts, which were unrebutted by a competing expert, the state court unreasonably denied Alvarez's habeas petition without issuing an order to show cause or allowing factual development or a hearing. *See Brumfield*, 135 S. Ct. at 2282 (holding that the petitioner satisfied the requirements of section 2254(d) because the state's failure to consider information related to Brumfield's intellectual disability resulted in an unreasonable determination of the facts). Because the state court was required to accept the truth of Alvarez's allegations and to make all reasonable inferences in his favor, based on the state court record, "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98.

C. The Ninth Circuit's decision contradicted this Court's precedents

In applying AEDPA, federal courts evaluate whether the state court decision was unreasonable. This hinges in part on the state court's evaluation of the constitutional claim. In reviewing the state court's decision, the Ninth Circuit's critical flaw was that it evaluated the merits of Alvarez's claims without regard to AEDPA standards. The Ninth Circuit thus deviated from this Court's established jurisprudence by reviewing the reasonableness of the state court decision under a higher standard than the *prima facie* case standard required by state law, and by extension by AEDPA. Any analysis of whether Alvarez can *prove* his claim at the pleading stage alters both the legal and factual standards dictated by § 2254(d).

In *Brumfield*, this Court vacated the denial of habeas relief for a petitioner who claimed he was intellectually disabled and thus categorically exempt from the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002). *Brumfield*, 135 S. Ct. at 2273, 2283. In state court, Brumfield presented evidence in support of his *Atkins* claim and requested an evidentiary hearing in accordance with the state statutory standard, which required an evidentiary hearing “when an inmate has put forward sufficient evidence to raise a ‘reasonable ground’ to believe him to be intellectually disabled.” *Id.* at 2274 (internal citations omitted). This Court found that “the state court’s rejection of Brumfield’s request for an *Atkins* hearing was premised on an ‘unreasonable determination of the facts within the meaning of § 2254(d)(2).’” *Id.* at 2276. This Court emphasized: “It is critical to remember . . . that in seeking an evidentiary hearing, Brumfield was not obligated to show that he was intellectually disabled,” and that “Brumfield had not yet had the opportunity to develop the record for the purpose of proving an intellectual disability claim.” *Id.* at 2281.

The Ninth Circuit’s decision here departed from *Brumfield* by applying a heightened requirement of proof to Alvarez’s habeas pleading. Alvarez, like Brumfield, met the low threshold for pleading his constitutional violation in state court. He was not required to prove that he was incompetent at the pleading stage. The state court’s conclusion otherwise was unreasonable, and the Ninth Circuit’s imposition of a higher standard improperly constricted the AEDPA reasonableness analysis. The heightened standard also contravenes Ninth Circuit practice in evaluating habeas pleading standards in determining competency. See e.g. *Bemore v.*

Chappell, 788 F.3d 1151, 1177 (9th Cir. 2015) (finding that the denial of an evidentiary hearing on the petitioner’s competency was reasonable, because no prima facie case was stated).

By incorrectly evaluating the reasonableness of the state court’s decision, the Ninth Circuit failed to correctly evaluate Alvarez’s habeas petition under § 2254(d). As such, its opinion cannot be squared with this Court’s precedents.

VI. CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the case should be remanded to the Ninth Circuit so that it may correctly review the state court findings in accordance with § 2254(d).

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: March 12, 2019

By: /s/ Lauren Collins
Lauren Collins*
Deputy Federal Public Defender

Attorneys for Petitioner
**Counsel of Record*

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h), I certify that the document contains approximately 3,209 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 12, 2019.

/s/ Lauren Collins
Lauren Collins*
Deputy Federal Public Defender

Attorney for Petitioner
Juan Bosco Alvarez
**Counsel of Record*

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CERTIFICATE OF SERVICE

I, Lauren Collins, do swear or declare that on this date, March 12, 2019, as required by Supreme Court Rule 29, I have served the enclosed Motion for Leave to Proceed in Forma Pauperis, Petition for Writ of Certiorari and Appendix, on each party to the above proceeding required to be served, or that party's counsel, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Idan Ivri, Deputy Assistant Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 269-6168

Counsel for Respondent

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 12, 2019 at Los Angeles, California.

/s/ Lauren Collins
Lauren Collins*

Attorney for Petitioner
Juan Bosco Alvarez
**Counsel of Record*