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18-9333

CASE NO.:
L.T. CASE NO: 18-56640

Supreme Court, U.S.
FILED

APR 10 2019

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**IN THE SUPREME COURT
OF THE UNITED STATES**

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GUSTAVO GOMEZ, - PETITIONER

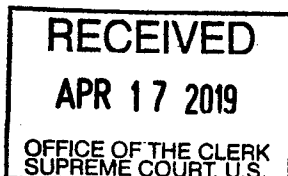
Vs

**MARK INCH, SECRETARY
DEPARTMENT OF CORRECTIONS, - RESPONDENT**

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT**

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ORIGINAL



**Gustavo Gomez # 125205
Columbia Correct. Inst. Annex
216 S.E. Corrections Way
Lake City, Florida 32025**

QUESTION(S) PRESENTED

1. Were this Petitioner's Sixth Amendment rights according to the United States Constitution violated by the United States Court of Appeal for the Ninth Circuit Judge?
2. Does Petitioner's conviction and sentence violate the principles as cited in Gomez V. Madden, 2018 U. S. Dist. LEXIS 14992 (9th Cir. 2018)
3. The ruling in Jackson V. Barnes, 749 F. 3d 755 (9th Cir. 2018) allowed for this Petitioner to certify this question of law to the Honorable Supreme Court of the United States, despite the Lower Tribunal Court's actions.
4. Should this Petitioner's Motion to Alter and/or Amend been granted ?

LIST OF PARTIES

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

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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 A to the petition and is:

☐ reported at _____
☐ 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☒ is unpublished.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☐ is unpublished.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 States Court to review the merits 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 _____ 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 March 15, 2019, Appendix "B".

☐ 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: 6-29-19, and a copy of the order denying rehearing appears at Appendix "C".

☐ 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 Court:

The date on which the highest state court decided my case was _____.

A copy of that decision appears at Appendix _____.

☐ A 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 PROVISION INVOLVED

Fourth Amendment of the United States Constitution

Fifth Amendment of the United States Constitution

Sixth Amendment of the United States Constitution

Fourteenth Amendment of the United States Constitution

STATEMENT OF THE CASE

This Petitioner prepared and submitted a Petition for Writ of Mandamus within the Honorable United States District Court for filing because the Assistant District Attorney Office have failed to provide this Petitioner legal documents that the Petitioner needed and were being sought pursuant to the Freedom of Information as well as the Public Record Act.

This Petitioner argued that his petition was not untimely and should not have been dismissed. This Petitioner did appeal the Honorable United States District Court order of denial to the Honorable United States Court of Appeals for the Ninth Circuit, seeking to have the incorrect ruling reversed. This Petitioner was unable to prepare and submit a Certificate of Appealability, as the Federal Rules of Civil Procedure prescribed because the Honorable United States Court of Appeals for the Ninth Circuit denied Petitioner's Certificate of Appealability. This Petitioner submitted a timely Motion to Alter and/or Amend addressing facts and case laws that were on point on the issue that had to have been overlooked and/or misapprehended when the Honorable United States Court of Appeals for the Ninth Circuit entered the order of denial. The jurisdiction of the Honorable Supreme Court of the United States is invoked under 28 U.S.C. § 1254(1).

REASONS FOR GRANTING THE WRIT

THIS PRO SE PETITIONER ARGUES THAT THE HONORABLE UNITED STATES COURT OF APPEALS JUDGE ORDER THAT DENIED PETITIONER'S MOTION TO ALTER AND/OR AMEND VIOLATED PETITIONER'S FOURTH; SIXTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION..

This pro se Petitioner argues that the Honorable United States Court of Appeals for the Ninth Circuit Judge order that denied Petitioner's Motion to Alter and/or Amend violated Petitioner's Fourth; Sixth and Fourteenth Amendment of the United States Constitution because this Petitioner was unable to even prepare and submit a Certificate of Appealability brief that the Federal Rules of Civil Procedure prescribed. This Petitioner had to file a Motion to Alter and/or Amend pursuant to Rule 59(e) of the Federal Rules of Civil Procedure because the Honorable United States Court of Appeals for the Ninth Circuit Judges "Canby and Graber" incorrectly denied Petitioner's Certificate of Appealability by stating on the order of denial: "that the Appellant had not shown how the Assistant District Attorney Office had been denying all of Petitioner's Public Record Request and his Freedom of Information Act, in which this Petitioner had been requesting the

Assistant District Attorney Office to provide this pro se Petitioner a copy of the police report/deposition of Asdrubal Angulo Romanovbich, who are still in possession of these requested information.

This Petitioner argued that the United States Justice Department as well were involved in this matter because this Petitioner had contacted that department requesting the same legal documents from them under the Freedom of Information Act. This Petitioner was notified by that department **“Matthew Hurd”** on August 18, 2017 that their office did not have Petitioner’s records and that this Petitioner had to request the legal document from the California for them because they were sent to the State Attorney of the Ventura County, California.

This Petitioner has stated that the document that this Petitioner has been attempting to obtain has been to reopen Petitioner’s criminal case and that the evidence which this Petitioner asserts the Assistant District Attorney possessed should still be in their possession. The Assistant District Attorney did respond back on July 20, 2016 by notifying this Petitioner that the Assistant District Attorney would be unable to provide this Petitioner a copy of the requested material. The fact that this Petitioner’s criminal case had been closed does not affect this Petitioner’s right to request for the Public Record documents and so this Petitioner was in fact entitled to be provided a copy of the witness interviews or other

discovery material pursuant to the Public Record Act and/or the Freedom of Information .

This Petitioner argues that the Honorable United States Court of Appeals for the Ninth Circuit, in dismissing Petitioner's Motion to Alter and/or Amend, the Honorable Court had prematurely terminated the inquiry without reaching the weighty federal constitutional separation-of-powers objections, which the Respondent had raised, as the Honorable Court of Appeals had mistakenly entered an order which denied Petitioner's Certificate of Appealability without granting this Petitioner an opportunity to submit a C.O.A. brief.

The Honorable United States Court of Appeals for the Ninth Circuit had to assume that a narrow and specific assertion of executive privilege by the Respondent was a necessary precondition in considering these objections, where, among other factors, **(a)** the need for information was much less weighty than in a criminal case; **(b)** the District Court had approved overly broad discovery requests, which would have provided the organizations with **(i)** all the disclosure to which they would have been entitled in the event that they prevailed on the merits, and **(ii)** much more besides; and **(c)** the Respondent had objected, in arguments which had been ignored or rejected, to the scope of discovery and the burden imposed. In

Petitioner's instant cause it is proven through the numerous exhibits how the Respondent have refused to provide this Petitioner the requested legal documents that are in their possession within a reasonable time frame.

This Petitioner directs the Honorable United States Court of Appeals for the Ninth Circuit Judge attention to the ruling in **Jackson V. Barnes, 749 F.3d 755 (9th Cir. 2014)** because this Attorney General appealed to the Honorable United States Supreme Court Justices and the Writ of Certiorari, which the Attorney General pursued was denied [*See by Barnes V. Jackson, 2015 U.S. LEXIS 234 (S. Ct. 2015)*]. In Jackson, the Honorable United States Court of Appeals for the Ninth Circuit Judge stated in part the following:

“As to Jackson's claim that the Ventura County Sheriff's Department violated his Fifth Amendment rights by failing to supervise Barnes, we reverse the district court's judgment on the pleadings for the Sheriff's Department because Jackson has sufficiently pleaded a "policy of inaction" for which the Sheriff's Department, as a county actor, is subject to suit under 42 U.S.C. § 1983. Finally, we affirm the district court's dismissal of Jackson's claim against the District Attorney's Office, but instruct it to grant Jackson leave to amend his complaint to state a claim against Murphy. Reversed and Remanded.”

This Petitioner directs the Honorable Court attention to the ruling in **Diaz-Sanchez V. Beard and McDowell, 2018 U.S. Dist. LEXIS 15965(9th Cir. 2018)** in which the Honorable United States District Court for the Eastern District of

California Judge addressed this identical point of law by stating in part:

“From the limited record, the Court cannot say that these disclosure claims are "plainly meritless" See Id. Further, nothing in the record suggests that Petitioner has intentionally or maliciously failed to pursue his potentially meritorious claim. See Id. Indeed, Petitioner could not have pursued these claims because the California Supreme Court adopted the new rule on November 2, 2017, after Petitioner filed his Motion for Reconsideration on October 5, 2017. Accordingly, the Court finds good cause for the unexhausted claim and will grant a stay and abeyance under Rhines.”

Once again this Petitioner directs the Honorable Court attention to the ruling in **Gomez v. Madden, 2018 U.S. Dist. LEXIS 14992 (9th Cir. 2018)** in which the Honorable United States District Court for the Southern District of California Judge addressed this identical point of law by stating in part:

“IT IS HEREBY ORDERED that Plaintiff's motion to reopen the case is GRANTED. (ECF No. 10). The Court vacates the portion of its February 17, 2017 Order dismissing the action and directing the Clerk of Court to close the case. Plaintiff shall file any Amended Complaint within sixty (60) days of the date this Order is entered.

The Clerk of Court is directed to mail to Plaintiff a copy of this Order, as well as the December 14, 2016 Order and the February 17, 2017 Order issued by the Court in this case.”

Also, the Petitioner directs the Honorable Court's attention to the ruling in **GOPRO, INC. V.. 360 HEROS, INC., 2018 U.S. Dist. LEXIS 16177 (9th Cir.**

2018) in which the Honorable United States District Court for the Northern District of California Judge specifically addressed this identical point of law by stating in part the following:

“Currently before the Court is plaintiff GoPro's motion for leave to file a motion for reconsideration. Dkt. No. 159. GoPro seeks reconsideration of a limited portion of the Court's November 28, 2017 Order limiting the deposition of Mr. Kinter to three hours. Dkt. No. 151.

**Having carefully considered the papers submitted, the Court hereby GRANTS plaintiff's request for leave to file a motion for reconsideration and will treat plaintiff's papers as such. Accordingly, the Court hereby orders that Mr. Kinter may be deposed for up to six (6) hours,
IT IS SO ORDERED”**

As well, this Petitioner directs the Honorable Court attention to the ruling in **Burtenshaw V. Berryhill, 2018 U.S. Dist. LEXIS 10924 (9th Cir. 2018)** in which the Honorable United States District Court for the Central District of California Judge addressed this identical issue by stating in part the following:

“Federal Rule of Civil Procedure 59(e) authorizes a motion to alter or amend a judgment. In the Ninth Circuit, a Rule 59(e) reconsideration motion is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Wood v. Ryan, 759 F.3d 1117, 1121 (9th Cir. 2014). "A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling

law." McDowell v. Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999) (en banc) (emphasis original). A district court may also grant a Rule 59(e) motion to "prevent manifest injustice."

Lastly, this Petitioner directs the Honorable Courts attention to their own ruling in **Roberts; Chewey; Chewey; Krenn, V. AT&T MOBILITY LLC, 877 F.3d 833(9th Cir. 2017)** because this identical point of law was addressed by stating in part the following:

"We have jurisdiction under 28 U.S.C. 1292(b) and Federal Rule of Appellate Procedure 5. We review orders compelling arbitration de novo. Duffield v. Robertson Stephens & Co., 144 F.3d 1182, 1186 (9th Cir. 1998) (reviewing order compelling arbitration certified under 1292(b)), overruled on other grounds by EEOC v. Luce, Forward, Hamilton & Scripps, 345 F.3d 742 (9th Cir. 2003). The district court's state action determination is subject to de novo review. Merritt v. Mackey, 932 F.2d 1317, 1324 (9th Cir. 1991) (citation omitted)."

This Petitioner argues that he has shown to the Honorable United States Supreme Court Justices how this pro se Petitioner had been stripped of his Fourth Amendment of the United States Constitutional rights when the Honorable United States Court of Appeals for the Ninth Circuit Judge denied this Petitioner to present numerous facts and the Case laws that addressed this identical violation and granted this Petitioner the relief being sought. As the Honorable United States District Court Judge from the very beginning misconstrued the facts that this pro se

Petitioner had filed a petition for writ of habeas corpus on August 15, 2018 when this Petitioner had been attacking this claim on a Writ of Mandamus. This Petitioner was unable to submit an answer/reply to any of the petitions, as the Honorable Court's deny Petitioner's petition.

The Honorable United States Court of Appeal for the Ninth Circuit Judge had to have overlooked and/or misconstrued numerous facts and the case laws that this Petitioner claim involved and the Petitioner seeks for the Honorable United States Supreme Court Justices address the legal issues that this pro se Petitioner raised on his Motion to Alter and/or Amend the Order of dismissal.

The above cases clearly reflect how this Petitioner's claims is similar to those made by others in which the Honorable United States Supreme Court's Justices specifically addressed: **Johnson V. United States, 135 S. Ct. 2551 (2015)** and **Welch V. United States, 136 S. Ct. 1257 (2016)**; where no requirement to demonstrate actual innocence of crimes of convictions was required and/or no reasonable fact finders would have found [him] guilty.

As this Petitioner's Motion to Alter and/or Amend clearly reflects how the record that this Petitioner did exhaust all State remedies before invoking the Honorable United States Supreme Court jurisdiction.

This Petitioner argues that the Honorable Supreme Court of the United

States Justice's should invoke their jurisdiction under 28 U.S.C. § 1254(1) to review this major State and Federal Constitutional violation, which Petitioner's claim raises/attacked because the Federal Courts have been notified by the Respondent that this pro se Petitioner's Petition for Writ of Mandamus did not raise a claim cognizable by the United States Court of Appeals for the Ninth Circuit, a ruling that this Petitioner has argued is incorrect and should have been reversed.

This Petitioner argues that denying the Petitioner access to the Honorable United States Court of Appeal for the Ninth Circuit Court is too harsh of a sanction to implement against this Petitioner because in reality the sole ground which this Petitioner raised on his alleged Petition for Writ of Mandamus, does in fact raise a major State and Federal Constitutional Right violation which has been completely overlooked throughout the Honorable Federal Courts.