

No. _____

19-5200

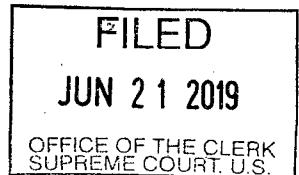
IN THE

SUPREME COURT OF THE UNITED STATES

ISIDRO ROMAN. — PETITIONER
(Your Name)

VS.

STATE OF CALIFORNIA — RESPONDENT(S)



ON PETITION FOR A WRIT OF HABEAS CORPUS TO

~~UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT~~
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

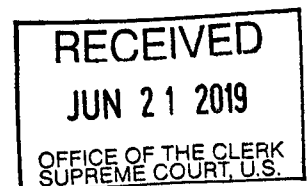
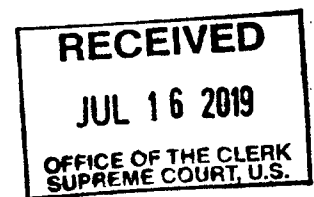
PETITION FOR WRIT OF HABEAS CORPUS

ISIDRO ROMAN
(Your Name)

5150 O'BYRNES FERRY ROAD
(Address)

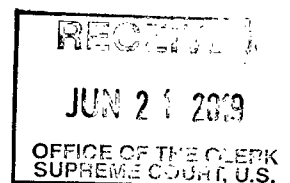
JAMESTOWN, CA. 95327
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

1. Was petitioner denied effective assistance of counsel below the standard mandate of the United States Constitution Amendment Six ?
2. Was petitioner denied due process by the court below not allowing the petitioner to file a Federal Habeas Corpus Petition base on factual evidence that was not discovered until after time for appeal and discovered after time to file Federal Habeas, Corpus petition ?
3. Was the District Court err by treat the new petition with second successive Federal Habeas Corpus petition ?
When is a new Federal Habeas Corpus Petition and New ground of " I.A.C." claim point out for Petitioner by the District Judge ?
4. Was Petitioner's conviction secured by way of defense counsel and Prosecutor withholding evidence in violation of Brady v. Maryland ?
5. Was Petitioner's conviction secured by way of defense/ and District Attorney's Misscarrie of Justice/Actual innocence ?
Mandate of the United States Constitution ?
6. Does Petition meet the criteria of Slack v. McDaniel,



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:
-

Attorney General for the State of California

United States Northern District Court

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| Lee v. Lampert, 653 F3d 929, 934-37 [9th Cir. 2011]. | |
| Schlup v. Delo, 513 U.S. 298, 115 S. ct. 851, 130 L. Ed. 2d 808 [1995]. | |
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

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 _____; 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 B 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 _____ 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 2/21/19 and 8/3/18.

☒ 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. § 1651, 2241.

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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

U.S. Constitution Amendment one authorize guarantee access to the court to redress deprivation of rights/liberty.

U.S. Constitution Amendment five guarantee due process of the law.

U.S. Constitution Amendment six guarantee right to jury trial and right to counsel, inter alias.

U.S. Constitution Amendment fourteen guarantee due process and equal protection of the laws.

U.S. Constitution Amendment eight prohibits cruel and unusual punishment and excessive bails.

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3 STATE OF FACTS FOR DEFENSE

4 The alleged victim (Jose Gonzales) herein after refer to as (victim)
5 petitioner maintains that the alleged victim came to petitioner's home with
6 the intent to harm petitioner and petitioner's immediate family members who
7 resided with petitioner, witnessed by witness (Jesus Hernandez) who provided
8 petitioner's investigator a statement that the alleged victim told witnesses
9 (Hernandez) that he (victim) had a grenade and was going to show it to the
10 petitioner. [See investigator report of Rich Dickerson dated August 29, 2012
at pages 1 lines 34-35; and page 2 lines 1-5 of exhibit "B" hereto.]

11 Petitioner maintained through the years that the shooting of the alleged
12 victim was in self defense in response to what petitioner believed to be a
13 real threat when alleged victim came to petitioner's home with the grenade,
14 later discovered to be what the alleged victim was reaching for and threatening
15 petitioner at petitioner's home.

16 Petitioner stated during pretrial and during trial, that he petitioner
17 only shot out of defense of his family and immediate person when the alleged
18 victim had made a threat earlier and returned to petitioner's home armed with
19 the grenade that investigator (Rich Dickerson) learned from witness (Hernandez)
20 who confirmed that the alleged victim had in fact showed a grenade and stated
21 that he(victim) was going to show it to petitioner, while returning to petitioner's
22 home uninvited and started reaching in his waist trying to pull out what petition
23 assumed was a gun opposed to the grenade that petitioner later discovered was the
24 more deadly threat petitioner and his family would have incurred had the victim
25 been able to pull the grenade out and tossed it according to exhibit "C" copy
26 of investigator Rich Dickerson's follow-up investigation report at page 2, lines
27 12-29. The attorney Mitri Hanania provided a declaration signed under penalty of
28 perjury confirming discovery evidence exculpatory for defense exhibit "I" was available.

I.

THE WRIT OF HABEAS CORPUS
WILL AID THIS COURT'S APPEAL
JURISDICTION DUE TO COURTS
BELOW DENYING THIS COURT'S
OWN PRECEDENTS THEIR EFFECTS

Per the Rules of the Supreme Court of the United States, Rule 20.1, this petition should be granted because it will aid this Court's appellate jurisdiction to cause the Courts below to enforce the effects of this Court's precedents cited as law of the land per the supremacy clause.

In this instant case the Petitioner filed his direct appeal and applications for habeas corpus relief up to the state of California United States Court of Appeals for the 9th Circuit United States Northern District Court; California State Supreme court, according to exhibits #1-#3 herto, that include exhibit #2 copy of motion per Federal Rules of Appellate Procedure, rule 60(b) that were denied in error.

Petitioner contends this Court should find that Petitioner's claim of ineffective assistance of counsel was found by the District Court according to exhibit#2. However, the Court denied Petitioner's application to file second successive petition in conflict with this precedents cited as Slack v. McDaniel, 529 U.S.473, 484(2000); McCleskey v. Zant, 499 U.S.467, 111 S.Ct 1454(1991).

Petitioner relies on the case of Sawyer v. Whitley, 505 U.S.333 (1992). This Court held that habeas corpus is the proper remedy to correct miscarriage of justice and violations of fundamental rights of an accused, and the Federal Court may still here the merit of the Petitioner's claims inspite of procedural bars cause and prejudice.

1 The Petitioner contentions purport to be the following
2 incorporated here by this reference that aid the Court's jurisdiction:

3 A.

4 PETITIONER WAS DENIED EFFECTIVE
5 ASSISTANCE OF COUNSEL BELOW THE
6 STANDARDS OF THE UNITED STATES
 CONSTITUTION AMENDMENT SIX

7 The court in the case of People v. Pope (1979) 23 Cal.3d 423, where the
8 court held that habeas corpus is the appropriate remedy to challenge the
9 assistance of counsel that falls below the standard of the United States
10 Constitution Amendment Six, to enable the attorney to show cause as to why
11 the service rendered was below the standards of the United States Constitution.

12 In this instant case the attorney Michael DeVoy, failed to secure the
13 testimony and evidence from eye witness (Jesus Hernandez) who could have
14 provided testimony that the alleged victim in this case had a grenade, and
15 admitted that he the alleged victim was going to show it to petitioner at the
16 petitioner's home, which investigator Rich Dickerson provided his report that
17 the evidence testimony of the witness (Hernandez) could have provided would
18 have supported petitioner's claim of self defense and defense of his family.
19 [See exhibits "B" and "C" copies of investigator Rich Dickerson's reports
20 at pgs 1 lines 34-35 and page 2 lines 1-5.]

21 Petitioner contends that this court should find that petitioner's
22 counsel Michael DeVoy , provided services below the standards of the United
23 States Constitution Amendment Six, according the United States District court
24 Case No. 16-cv-02985-HSG (PR) , according to exhibit "A" incorporated here
25 by this reference Magistrate's finding and District Court Judge order.

26 Petitioner was prejudiced substantially when the testimony of the witness
27 Jesus Hernandez was not introduced by trial counsel Michael DeVoy which would
28 have caused the jury to reach a different verdict in light of the grenade evidence

1 testimony of Jesús Hernandez, who was available to testify at time of trial
2 and was not called by neither trial counsel Michael Devoy and the District
3 Attorney assigned according to exhibits "B" and "C" reports of investigator
4 Rich Dickerson. [See Strickland v. Washington (1984) 466 at page 694.]

5 B.

6 TRIAL COUNSEL MICHAEL DEVOY WAS NOT
7 EFFECTIVE WHEN HE FAILED TO SECURE THE
8 GUN SHOT RESIDUE (GSR) FROM THE VICTIM
9 THAT COULD HAVE DEMONSTRATE THE VICTIM
10 HAD IN FACT FIRED A GUN DURING THE
11 ALTERCATION PETITIONER HAD WITH VICTIM

12 The record is silent of any record of Attorney Michael DeVoy securing
13 discovery of (GSR) results of the victim , and no record of any request for
14 such results. [See silent record of defense request for (GSR) records.]

15 There was evidence from witnesses Coronato and Rodriguez who confirm
16 there was a second gun, and that they in fact saw the alleged victim in this
17 case with a gun days before the incident, and a .38 caliber bullet was found
18 at the scene, and that there was evidence of second gun according to the Sheriff
19 ballistic firearms expert. [See exhibit "D" copy of Sheriff ballistic firearm
20 expert report.]

21 Petitioner contends this court should find that trial counsel failed to
22 demand the reciprocal discovery evidence before or after trial that required
23 the (GSR) report to be secured and provided by both defense and prosecutor.

24 Petitioner attacks the failure of defense counsel to secure the reciprocal
25 discovery that include (GSR) discovery evidence mandated by law to be secured
26 and provided by both prosecutor and defense counsel, irrespective if evidence
27 is exculpatory or inculpatory for the defense.[See Penal Code sections 1054,
28 1054.1 and 1054.5.

29 Petitioner relies on In re Neely (1993) 6 Cal.4th 901, 919, where the
30 court held counsel has a duty to pursue evidence favorable for the defense.

1 C.

2 PETITIONER'S TRIAL COUNSEL SUPPRESSED
3 AND WITHHELD THE DISCOVERY EVIDENCE
4 OF THE EXPERTS EVIDENCE THAT THERE
5 WAS TWO GUNS INVOLVED ONE BELONGING
6 TO THE VICTIM AND THE OTHER BELONGING
7 TO PETITIONER

8 Due the trial attorney Michael DeVoy, failing to read the records,
9 research the expert reports filed as exhibits with this instant petition
10 clearly resulted in the breach of duty to develop the scenario of the
11 events that took place on the day of the incident, and would prove self
12 defense.

13 If the jury would have had the evidence that there was two guns,
14 one belonging to the petitioner and the other belonging to the alleged
15 victim, it would have demonstrated the same conclusion the Sheriff expert
16 who provided the ballistic results that provided proof that the (GSR) found
17 evidence that there was a second gun.

18 There is a reasonable probability that a jury would have considered
19 this instant case a matter of self defense, and would undermine the prosecutor's
20 case in chief, and a different result would have occurred in favor of this
21 petitioner. [See Strickland v. Washington (1984) 466 U.S. at p. 694.]

22 D.

23 DEFENSE COUNSEL FAILED TO PRESENT AND
24 INTRODUCE TO THE JURY THE ALLEGED
25 VICTIM'S EXTENSIVE CRIMINAL VIOLENT
26 RECORD TO SHOW VIOLENT PROPENSITY

27 Petitioner testified at trial how he was violently assaulted by the
28 alleged victim in front of petitioner's friend (Angela Coronado) and kids
29 who were also present. [See the arrest record of the alleged victim that
30 was not introduced by defense counsel DeVoy according to exhibit "E" hereto.]

1 E.

2 TRIAL COUNSEL FAILED TO SECURE PHONE
3 TRANSCRIPT RECORDS OF THE CONVERSATION
4 BETWEEN PETITIONER AND THE ALLEGED
5 VICTIM RECORDED NOVEMBER 6TH 1993 THAT
6 DISPUTE ANY CLAIM THAT THE ALLEGED
7 VICTIM CAME TO PETITIONER'S HOME TO
8 GIVE A MOTORCYCLE AS A PEACE OFFERING

9 In this instant case the alleged victim's common law wife (Lombera, Ramona)
10 stated to police that the alleged victim called petitioner to settle a feud that
11 involved a previous fight, and the alleged victim was going to give petitioner
12 a motorcycle as a peace offering according to report of Detective Simpson, hereto
13 exhibit "F" .

14 Petitioner contends that the trial counsel DeVoy breached his duty that
15 required him to secure relevant phone records.

16 Petitioner attacks the failure of counsel DeVoy to secure the phone records,
17 it would have caused a different jury verdict in petitioner's favor . [See People v.
18 Mayfield (1993) 5 Cal.4th 142, 199.]

19 G.

20 TRIAL COUNSEL FAILED TO REQUEST THE COURT
21 INSTRUCT ON SELF-DEFENSE AND DEFENSE OF
22 OTHERS RESULTED IN PREJUDICE FOR DEFENSE

23 Trial counsel DeVoy, failed to request instruction on self defense and
24 defense of others , which were fundamentally connected with the case.[See jury
25 instruction for silent record of instruction self-defense and defense of
26 others.]

27 Petitioner relies on the case of Rock v. Arkansas (1987) 483 U.S.44,50-51,
28 where the court held that an instruction was essential to the correlative right
to present a defense.

Petitioner contends that this court should find that the United States
District Court's findings should be adopted and incorporated with this matter.

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H.
PETITIONER WAS DENIED DUE PROCESS BY THE COURT
BELOW DENYING PETITIONER'S APPLICATION TO FILE
A SUCCESSIVE FEDERAL HABEAS CORPUS PETITION THAT
PETITIONER MAY PROSECUTE A HABEAS CORPUS
TO ATTACK A VOID JUDGMENT ANYTIME, EVEN
AFTER THE MATTER IS AFFIRMED ON APPEAL

The court in the case of In re Birdwell (1996) 58 Cal.Rptr.2d 244, held that the court is not in the business of effectuation void judgments, and the petitioner may attack a void judgment anytime, even after the case is affirmed on direct appeal, and procedural bars do not apply.

In this instant case the petitioner's direct appeal was not exhausted until recent and before petitioner discovered new evidence that was provided by investigator whose discovery reports and records were not turned over to petitioner until after time for appeal according to exhibits filed with this instant petition, incorporated here by this reference.

Petitioner contends this court should find that the United States District Court Judge found that the petitioner was denied the Constitutional Amendment six benefit of effective assistance of trial counsel who failed to turn over discovery information to the jury that would have been exculpatory for the defense, in light of the fact that there were two guns involved, and one belong to the alleged victim in this case which (GSR) gun shot residue was never secured by trial counsel for petitioner.

Petitioner attacks the void judgment in this case that was secured in violation of the United States Constitution Amendment Six, resulting in a void judgment.

Petitioner relies on the case of Dugger v. Adams, 489 U.S.401, a violation of federal law constitute fundamental unfairness.

I.

PETITIONER'S CONVICTION WAS SECURED BY
PROSECUTOR AND DEFENSE COUNSEL WITHHOLDING
RELEVANT DISCOVERY EVIDENCE UNTIL AFTER
TIME FOR DIRECT APPEAL EXPIRED IN VIOLATION
OF BRADY v. MARYLAND, 373 U.S. 83 (1963)

The Court in the case of Brady v. Maryland, 373 U.S. 83 (1963) held that the State failure to disclose evidence favorable to the accused constitute a violation of due process.

The Court in the case of Strickland v. Washington, 466 U.S. 668 (1984) held that the Petitioner was denied effective assistance of counsel where counsel for the defense failed to present evidence of the alleged victim's criminal history and withheld that evidence until after time for direct appeal and post conviction petition could be filed in federal Court.

In this instant case the Federal Magistrate/Judge agreed that counsel for the defense was ineffective by withholding discovery evidence joined by the prosecutor in this case. [See appendix "B" copy of U.S. Northern District Court judge opinion incorporated here by this reference.]

Petitioner contends that this Court should find that Petitioner was denied due process of effective assistance of counsel at trial, in light of the fact that trial counsel withheld relevant discovery that defense counsel withheld until after time for direct appeal and post conviction time to file federal habeas corpus petition expired.

Petitioner attacks the suppression of favorable evidence by the prosecutor and defense counsel that operated to keep the jury from learning about the alleged victim's violent propensity record that may have caused a different jury verdict in favor of Petitioner's claim of self defense. [See Penal Code section 686 that mandate Petitioner shall be provided effective assistance of counsel at all stages.]

Petitioner relies on Brady v. Maryland, supra, that prohibit the State from withholding relevant evidence, including defense counsel failure to disclose evidence.

1 Evidence is material when there is a, "Reasonable Probability", that the withheld
2 evidence would had altered at least one juror's assessment [of the case].
3 Cone v. Bello, 129 U.S. ct. 1769. 1773 (2009). The Court found there is a Brady
4 violation where prosecutor failed to disclose witness prior criminal history
5 even when prosecutor did not personally know information. Petitioner attacks the
6 reasons why prosecutor never offered no innocent explanation why he never
7 presented the suppressed evidence to the jury, so they could determine there was a
8 realpossibility of the victim potential for violence. He had the report during
9 trial. Potitioner contends the withheld evidence would have put a different light
10 on this case, as to undermine confidence in the verdict because the prosecutions
11 case would have been affectively challenged. Witnesses could have been impeached,
12 and an actual basis for self-defense could have been demonstrated. In its absence,
13 Petitioner was denied a fair trial. Kyle v. Whiley, 514 U.S. at 434. In the case
14 at bar no reasonable explanation can be concluded for the suppressed evidence,
15 other than, if presented. it would have bolstered petitioner's claim of self-
16 defense. When the State withholds from a criminal defendant evidence that is
17 material to his guilt or punishment, it violates his right to due process of the
18 law in violation of the fourteenth Amendment. Bagly, 473, U.S. at 682. Favorable
19 evidence is material within the meaning of Brady when there is a, "Reasonable
20 probability that had the evidence been disclosed the result of the proceeding[s]
21 would have been different." E.G. U.S. v. Aviles-Colon, 536 F.3d 21 (1st Cir. (2008)

22 J.

23 THE SUPPRESSION OF TH G.S.R. RESIDUE DENIED PETITIONER
24 RECIPICOL DISCOVERY RIGHTS IN VIOLATION OF BRADY v. MARYLAND 373 U.S. 83 (1963)

25 The Court in Osborne, stressed the Brady duties apply to evidence the government
26 suppressed during trial. District Attorney's Office v. Osborne, 129 S. ct. 2308
27 (2009).
28

1 Strickler v. Greene, 527, U.S. 263 (1999). In the case at bar, the prosecution
2 and defense counsel withheld evidence that was material to Petitioner's guilt
3 or punishment. The suppression violated Petitioner's Right to due process of
4 law in violation of the Fourteenth Amendment.
5 Petitioner asserts [that] the State Courts suppression of evidence was an unrea-
6 sonable application of rights clearly established for constitutional rights to
7 discovery, the suppression rendered discovery meaningless. Here, the suppression
8 of G.S.R. reports were clearly important enough to have made a difference in the
9 outcome of the trial and amounts to cause and prejudice. Sufficiant to establish
10 a violation of discovery rights. Petitioner was denied his right to have the
11 jury hear and make a fair determination of facts necessary to support his claim
12 of self-defense. Kyle v. Whitley, 514 U.S. at 454. In this case, the reports
13 were favorable to petittioner because they agreed with his version of events.
14 Had the jury heard this evidence petitioner would have presented a factual basis
15 substantiating the victim possessed and fire[d] a gun, allowing the jury to
16 consider there were two guns fired. The question is not whether petitioner would
17 have received a different outcome, but whether in the evidences absence, did he
18 receive a fair trial. Bell, supra; Kyle, supra.

19
20 K.

21 PETITIONER'S CONVICTION WAS SECURED BY
22 DEFENSE COUNSEL INEFFECTIVE ASSISTANCE OF COUNSEL

23 Petitioner attacks defense counsel defidiant performance by pointing out,
24 counsel failed to investigate a possible defense was ineffective assistance.
25 Dugas v. Coplan, 365 F.3d 552 (7th Cir 2004) Defense counsel allowed the
26 prosecution to build and present his case unchallenged. This denied petitioner
27 his right to develope mitigating factors surrounded his claim of, self-defense.
28 The lack of trial strategy entirely failed to subject the prosecution itself
became unreliable . U.S. v. Cronic. 466 U.S. (1984) E.G. Miller v. Martin, 481

1 F.3d. 468, (7th Cir. 2007) Counsels choice not to present mitigating factors
2 warranted prejudice presumption. (See Appendix "B" Copy of U.S. Northern
3 District Judge Opinion, incorporated herein by reference).

4
5 Petitioner contends defense counsel's lack of trial preparations denied him of
6 a substantive or procedural right to which the law entitled him. Williams v.
7 Allen, 529 U.S. at 392-93. the cumulative effects of his deficient performance
8 undermine Petitioner's credibility during trial. He was precluded from substan-
9 tiating the eventa as they happened on the day the shooting occurred. Failure
10 to investigate forensics of shooting is, Ineffective Assistance because it
11 deprived Petitioner of substantial arguments. Wiggins v. Smith, 539 U.S.
12 510 (2003).

13
14 L.
15 PETITIONER SHOULD NOT BE DENIED THE BENEFIT OF
16 HIS CLAIMS BEEN DENIED FOR PROCEDURAL BAR CONSTITUTE
17 FUNDAMENTAL UNFAIR MISSCARRIAGE OF JUSTICE
18 ACTUAL INNOCENCE. McQUIGGIN / SCHLUP

19 Petitioner challenging the sufficiency of the evidence to support his conviction;
20 Under Jackson v. Virginia, 443 U.S. 307, 99 S. ct. 2781 61 L.Ed.2d 560 (1979),
21 A Petitioner "is entitled to Habeas Corpus felief if it is found that upon the
22 record evidence adduced at the trial no rational trier of fact could have
23 found proof of guilt beyond a reasonable doudt."
24 "443 U.S. at 324, 99 S.ct. 2781" The Jackson standard must be applied with
25 explicit referance to the substantive elements of the criminal offence as
26 defined by State Law. Chein v. Shumsky, 373 F.3d 978, 983 (9th Cir. 2004)
27 [qouting Jackson, 443 U.S. at 324 n. 16, 99 S. ct. 2781], Boyer v. Belleque,
28 659 F.3d 957, 964 (9th Cir. 2011).

1 In rare and extraordinary circumstances, a showing of actual innocence can serve
2 as a gateway through of limitations. McQuiggin v. Parkins, 569 U.S. 383, 386,
3 133 S. ct. 1924, 185 L.Ed.2d 1019 (2013). See also, Lee v. Lampert, 653 F.3d 929,
4 934-37 (9th Cir. 2011) [Enbanc].

5 To establish actual innocence, a Petitioner must meet the, threshold, requirement
6 set forth in Schlup v. Delo, 513 U.S. 298, 115 S. ct. 851, 130 L.Ed.2d 808 (1995).

7 This requires a petitioner to, "support his allegations of Constitutional error
8 with new, reliable evidence whether it be exculpatory scientific evidence that
9 was not presented at trial." Schulp, 513 U.S. at 324. The evidence need not be

10 newly discovered, but it must be, "Newly Presented" meaning that it was not
11 before trial Court. Griffin v. Johnson, 350 F.3d 956, 961-63 (9th Cir. 2003) A
12 petitioner must also "persuadse the district court that, in light of the new
13 evidence, no juror, acting reasonably, would have voted to find him guilty
14 beyond a reasonable doubt." McQuiggin, 569 U.S. at 386 [Citing Schulp, 513 U.S.

15 at 329]; See also House v. Bell, 547 U.S. 518, 538, 126 S. ct. 2064, 165 L.Ed.2d
16 1 (2006) [Emphasizing that the Schulp standard is demanding and seldom met].

17 moreover, "Actual Innocence" for the purpose of Schulp, "means factual innocence,
18 not mere legal insufficiency." Bousley v. United States, 614, 623, 118 S. ct.
19 1604, 140 L.Ed.2d 828 (1998).

20 A Petitioner's new evidence must be, "so strong that a Court cannot have confid-
21 ence in the outcome of the trial unless the Court is also satisfied that the
22 trial was free of nonharmless, Constitutional error." Schulp, 513 U.S. at 316.

23 The Habeas Court must consider all evidence both old and new, incriminating and
24 exculpatory, admissible at trial or not. Base upon this complete record, "The
25 Court makes a probabilistic determination about what reasonable, properly
26 instructed jurors would do". "Lee, 653 F.3d at 938 [internal quotations omitted].
27
28

1 In this case the State, and District Court erred by denying Petitioner's Habeas
2 Corpus for procedural bar.

3 The new attorneys assigned to represent Patitioner, and detective discovery all
4 the new evidence in question after represented Petitioner in "P.C. 1405" and
5 that was time that Petitioner became aware of all this new evidence and start to
6 seeking for justice. (See attached exhibit "B", and "C".)

7 All this new evidence never would have been discovered if not for the new attor-
8 nies, and investigator who discovered it for Petitioner. Petitioner does not have
9 to be accountable for the trial lawyers bad representation before, during and
10 after trial. Therefore, Petitioner's petition for writ of Habeas corpus
11 granted

II.

PETITIONER'S STATEMENT OF EXHAUSTED
STATE REMEDIES UP TO THE FEDERAL
COURT, INCLUDING APPLICATION
TO FILE SECOND SUCCESSIVE PETITION

This Court has granted relief to file a second successive Federal habeas corpus based on fundamental fairness and in light of the fact that the accused has exhausted all available remedies up to this Court according to Teague v. Lane, 489 U.S.288 (1989).

This Petitioner filed his State Habeas corpus petition in the California State Supreme Court alleging ineffective assistance of counsel according to exhibit #1 Case No.S249885, denied on 11/14/18 as untimely.

This Petitioner filed his Federal Habeas corpus in the United States Federal Northern District Court according to 16-cv-02985-HSG(PR) denied by the Court according to exhibit #2.

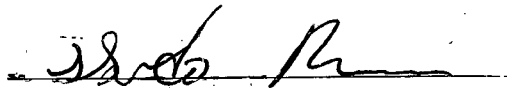
Petitioner's appeals and application to file a second successive habeas corpus petition was denied by the California 9th Circuit Court of appeal, including Petitioner's motion pursuant to Federal Rules of Appellate Procedure, Rule 60(b) denied on 8/3/18, directing the Court Clerk to open Petitioner's request for authorization to file a second successive habeas corpus petition in the district Court and as an order application for authorization to file a second successive 28 U.S.C. section 2254 petition, which the District Court for the Northern District of California denied the application on 1 / 5 /18 according to exhibit #2 incorporated here by this reference.

Petitioner was denied application for writ of certiorari by this Court as untimely, leaving Petitioner with no other speedy or adequate remedy at law to resolve the merits of the ineffective counsel claim according to exhibit # 4 denied on 4 /18/19.

CONCLUSION

The petition for a writ of habeas corpus be granted.

Respectfully submitted,



Date: 07-08-2014