No. 19-6425

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ANDRES SANTANA — PETITIONER
(Your Name)

vs.

CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ANDRES SANTANA
(Your Name)

CALIPATRIA STATE PRISON, C2-131, P.O. BOX 5006
(Address)

CALIPATRIA, CALIFORNIA 92233
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

1. What amount of due process is owed to a Defendant who is seeking post conviction discovery to prove himself innocent of the charges a jury found him GUILTY of, when the post conviction discovery sought is covered under a protected liberty interest, under the Due Process Clause of the U.S. Constitution, Fourteenth Amendment?
2. When a defendant has a right under a protected liberty interest, under the Due Process Clause of the U.S. Constitution, Fourteenth Amendment, in demonstrating his innocence, is a hearing and decision on the merits of his post conviction discovery requests a procedural right, substantive right, or both?
3. Is California's procedural framework for hearing post conviction discovery motions in violation of the Due Process Clause of the U.S. Constitution, Fourteenth Amendment?

LIST OF PARTIES

[X] 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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INDEX TO APPENDICES

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[ ] is unpublished.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[ ] is unpublished.

[X] 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 _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the State of California, Los Angeles Co. Superior court appears at Appendix B to the petition and is

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[X] is unpublished.

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).

[x] For cases from **state courts**:

The date on which the highest state court decided my case was July 10, 2019. 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

UNITED STATES CONSTITUTION, AMENDMENT XIV:

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.

TITLE 28 U.S.C. §2254(d)(1)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted with respect to claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--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.

CALIFORNIA PENAL CODE §1054.9 (2002)

(a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgement in a case in which a sentence of death or life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materilas described in subdivision (b).

(b) For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(c) In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and nothing in this section shall provide an alternative means of access to physical evidence for those purposes.

STATEMENT OF THE CASE

Petitioner was charged by Information originally filed July 25, 2002, but subsequently amended, in the Los Angeles County Superior Court with: Count I--special circumstance (robbery/murder of Reynaldo Aguilar (§§187, subd. (a), 190.2, subds. (a)(17)); Count II--Robbery of Reynaldo Aguilar (§211); Count III--special circumstance (multiple and robbery) murder of Anthony Esquer (§§187, subd. (a), 190.2, subds. (a)(3) and (a)(17); and Count IV--Robbery of Raul Mata (§211). The offenses were allegedly committed on February 18, 2001.

A. Introduction.

As to each count it was specially alleged that they were committed for the benefit and direction of and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members. (§186.22, subd. (b)(1).)

Pleas of not guilty and denials of all special allegations were duly entered and the matter continued for further proceedings.

On December 2, 2002, a jury found Petitioner guilty of all counts and on May 20, 2003, the court imposed two (2) life sentences without the possibility of parole and additional years for the gang allegations.

On direct review of the judgement, all was affirmed with the exception of some years as to the gang allegations.

As a California state prisoner sentenced to LWOP, Penal Code §1054.9 allows Petitioner to seek and file a motion for post conviction discovery. From July 4, 2007, to June 26, 2008, Petitioner, without success, sought to informally obtain post conviction discovery from the Los Angeles County district attorney. From December 22, 2008, to July 10, 2019, Petitioner sought from the California courts, via a Penal Code §1054.9 post conviction discovery motion, an order that he be provided access to materials in the possession of the prosecution and law enforcement authorities which he was wntitled to at the time of trial. The California courts never held a hearing on Petitioner's Penal Code §1054.9 post conviction discovery motion.

As a California state prisoner sentenced to LWOP, Penal Code §1054.9 allows him to file a motion for post conviction discovery. Such a motion will result in the Los Angeles County District Attorney having to provide/disclose to Petitioner materials/information being necessary to establish that Petitioner

is actually innocent of the charges he was convicted of, and to establish that a fundamental miscarriage of justice occurred in this case.

The Superior Court of the State of California for the County of Los Angeles is the court wherein the trial for Petitioner's criminal proceedings were held. Given that Petitioner is an LWOP prisoner, the trial court is the appropriate tribunal wherein he is to file a Penal Code §1054.9 post conviction discovery motion (Penal Code §1054.9(a); In re Steele (2004) 32 Cal.4th 682, 691-692, 10 Cal.Rptr.3d 536, 542 (In re Steele is the California Supreme Court's standard of review/controlling interpretive authority of Penal Code §1054.9)), as such, it has an official duty to hear and decide the motion and is statutorily and constitutionally bound to fulfill that duty. Penal Code §1054.9 entitles Petitioner to a liberty interest under the Due Process Clause of the U.S. Constitution, Fourteenth Amendment, to demonstrate his innocence.

B. Trial Proceedings.

Reynaldo Aguilar left home the morning of February 17, 2001, at about 8:00 a.m. driving his Lincoln Navigator. When he did not return that afternoon his wife (Elvira Duran) assumed he had stopped by his sister's home on Minnesota Avenue in the area of Long Beach Boulevard and Tweedy Boulevard to visit friends. Based on her husband's past behaviors, Duran called Bank of America to put a stay on their joint ATM card account (#0304912894). (RT 53-61.) [FN.1.] Duran next saw her husband the following morning at the coroner's office. Some of his personal effects including his key to the SUV, a wallet containing credit cards and miscellaneous items were missing. (RT 59-60.) [FN.2.]

Raul Mata had lived in Lynwood near the City of South Gate for nearly 20 years. The "Lynwood Dukes" street gang is from that area. Recalling the events of February 17, 2001, Mata explained that he was then homeless and living on

FN.1 "RT" refers to the Reporter's Transcript and "CT" refers to the Clerk's Transcript on direct review of the judgement--People v. Santana, Los Angeles County Superior Court, Case No. TA063973; California Court of Appeal, Second Appellate District, Division Six, Case No. B167415.

FN.2 Between February 18 to February 20, 2001, Reynaldo Aguilar's Bank of America debit card was attempted to be used in the cities of Redondo Beach, Lawndale and Hawthorne.

the streets. He began drinking beer that morning around 7:00 a.m. and spent most of the day with Esquer and some of his time with Aguilar. He again saw Aguilar that night between 8 and 9:00 p.m. outside a bar sitting in his SUV. Mata, Esquer and Aguilar than decided to drive to Aguilar's sister's house on Minnesota Avenue where they spent several hours sitting in the SUV drinking beer and smoking crack cocaine. (RT 64-71, 103, 105.) Mata admitted having consumed "about 18 beers" over the course of that day. (RT 72.)

While inside the SUV Mata noticed and recognized two male Hispanics (Petitioner, aka "Blanco", and "Eric") as they walked past the driver's side of the Navigator in the direction of Long Beach Boulevard. Mata could not remember whether he nodded to or verbally acknowledged either Blanco or Eric. (RT 72-73.) [FN.3.] Later, Mata left the vehicle to make a beer run. Walking up the street he encountered both Petitioner and Eric. Eric asked Mata if he had any money. When Mata answered $10 Eric demanded the money; Petitioner stood behind Mata's back. Eric reached into Mata's pocket and removed the $10 (RT 75-81, 83, 117-119) after which he and Petitioner walked over to the SUV located approximately 17' feet away. Mata followed and observed a third person hiding behind the vehicle. (RT 82.)

Someone opened the driver's door, "then they started to hit [Aguilar]" while demanding money by stating "the cash". (RT 82-83, 115, 123-127, 142.) The third person who had been behind the SUV joined in the beating. Esquer was seated in the back seat behind the driver. Mata was scared and ran from the area; he was able to place a 911 call. (RT 83-85, 142.) Mata's call made no mention of the identities (actual or street name) of any of the suspects.(See CT 80-82.)

Mata returned to the scene after police arrived and was subsequently interviewed in English by a sheriff's deputy and to whom Mata claimed he provided suspect names--"Blanco" and "Eric". Mata was nervous and in shock. (RT 89-92, 130-132.) He acknowledged telling police he had been drinking and taking drugs. (RT 129.) He denied identifying one of the suspects as "Flaco" rather than "Blanco". (RT 92.) [FN.4.]

FN.3 Mata had known Eric for several years, primarily from the neighborhood.

FN.4 Aguilar and Esquer both died of multiple forced trauma to the head. (RT 276-297.) Detective Scott was present at the autopsies. Scott recalled that most of the injuries to Esquer's head were to the right side. (RT 267-268.)

Mata described Petitioner's hair cut that night as "completely bald". Mata did not see any tatoos on Petitioner's head, (RT 130, 132) nor could he describe Petitioner's clothing or whether he was wearing short or long pants or a long or sleeved shirt. (RT 133.) He estimated Blanco's height at 5'5" to 5'6" but told the officers it was 5'7". He denied telling theofficers that Blanco's height was 5'10". (RT 134-135.) Mata could offer no description of the third suspect. (RT 138-139.)

The following day Mata was interviewed by a detective Shonka. He again gave the names Blanco and Eric. Shonka provided Mata with two six pack photo line ups. Petitioner appeared in the line ups, but Mata did not identify him. After a break in which Shonka spoke to Mata, he identified Petitioner in one of the line ups. Shonka was able to communicate with Mata without use of an interpreter. (RT 214.) According to Shonka's written report, Mata claimed to have known "Blanco" for about one year and "Eric" for about 10 years. (RT 218-219.)

On cross-examination Mata acknowledged he had not slept between 6:00 a.m. the morning of the 17th and his interview with Shonka the morning of the 18th. Nor could he recall when or where on the street he had slept the night of the 16th. He was probably awake most of that night since homeless people do not sleep well outside; its too dangerous not to be vigilant. (RT 106-107.) Mata acknowledged being an alcoholic whose days usually began with drink./ His alcoholism caused him black outs from time to time. He admitted being drunk the night of the attack but claimed to have been aware of what he was seeing. (RT 108-109.)

Mata's testimony did not remember telling detectives that he had seen Petitioner at least once a month on the streets for the 12 months immediately preceding the incident. He claimed to have told officers that he had seen Petitioner "very little" because he believed Petitioner had been in and out of jail during that time period. (RT 110-113, 145-146.) However, Mata's preliminary

FN.5 Detective Scott described Mata as pretty shook up and withdrawn when initially interviewed at the station. He was apprehensive and the officers had difficulty getting him to open up. (RT 240-241.) Scott also recalled Mata stating that he had seen Petitioner at least once a month for a year preceding the incident and that he had seen Eric many times over the years. (RT 266-267).

hearing testimony confirmed telling Detective Scott that he had in fact seen Blanco approximately once a month for the previous year. (RT 113.) It was stipulated between the parties that Petitioner was in custody during the following periods: December 14, 1998 to March 6, 1999; September 1, 1999 to November 7, 2000; and December 8, 2000 to December 15, 2000. (RT 229-230.)

Sheriff's patrol officer John Ganarial was one of the first units to respond to the crime scene; he found one man laying on the sidewalk and a second victim on a grassy area. (RT 168-172.) [FN.6.] Ganarial was then approached by Raul Mata who claimed to know the identities of the assailants. Mata appeared nervous and scared. Ganarial did not speak Spanish and Mata's English skills were not 100%. (RT 181-182.) Mata identified the attackers by name as "Eric" and "Flaco", not "Blanco". Ganarial's report so indicated. Mata described "Flaco" as 5'10", 18-25 years old, and Eric as 5'7". (RT 172-176, 179-180, 183-184.) He also described "Flaco's" head as "shaved". (RT 179-180.)

Petitioner was on supervised parole with agent Bonita Blake at the time of the incident. He had been released from custody the previous November (2000). (RT 227.) Blake met with Petitioner on two occassions in February 2001--once on February 20th at 101 North La Brea in the City of Inglewood at approximately 9:30 a.m. Petitioner's then listed address was in Hawthorne, 118th Street. Said address had the same zip code (90250) as that of the Hawthorne Shell station at which an attempt had been made that same day at 8:19 a.m. to activate Aguilar's VERSATELLER card. (RT 166, 220-223.) [FN.6.] According to Blake's initial recollection of that meeting, Petitioner's hands then appeared puffy or swollen. (RT 222-223.) She later clarified her recollection; his hands were not puffy or swollen, rather his knuckles on both hands appeared reddish. (RT 229.)

Detective Scott observed blood at the crime scene in the area to the right passenger side of the Navigator. (RT 233.) There was also a substantial amount of blood on the steering wheel, the driver's seat, the inside driver's side door panel, the exterior running board along the driver's side, and a dried pool of blood on the sidewalk adjacent to the passenger side. The rear cargo door was

FN.6 Blake acknowledged that she had received a call from Detective Scott on this case just before her scheduled February 20th meeting with Petitioner. She also spoke to Scott after her meeting. (RT 223-224.) She next saw Petitioner on March 7, 2001, at a parole board hearing. (RT 225.)

open and blood swipes and smears were observed about the vehicle and adjacent areas. A crack cocaine pipe was found in the gutter next to the Navigator. (RT 236.) No wallet, wedding ring, i.d. or credit cards were found on Aguilar's person or in the immediate vicinity. (RT 239-240.) None of these items were found on Petitioner's person or during a search of his home on March 7, 2001. (RT 269.) [FN.7.]

Scott also described a "Lynwood Dukes" gang-member crash pad on Minnesota Avenue. In a subsequent investigation Scott saw some gang members exit an upstairs apartment in that building, one of whom had a bandaged left hand. Because of their close proximity to the crime scene, photographs and field-identification cards were made of these individuals. (RT 261.) Although the names of these suspects did not match up to those given by Mata, the generalized suspect descriptions did match these individuals. (RT 262.)

South Gate police officer and street gang expert Antonio Mendez described the areas ("territory") the "Lynwood Dukes" claimed to control. He also explained the function of graffiti in the gang culture, i.e., to mark a particular gang's territory. Individual gang member names often appearin such graffiti. (RT 298-302.) Gang initiation rites include the requirement that new members "put[] in work"--i.e., commit crimes on behalf of the gang. Such "work" creates respect for both the individual members as well as the gang itself. (RT 304-309.) According to Mandez, there are 133 documented "Lynwood Dukes". (RT 307.) A common hand-sign of the gang is displaying the letter "L". (RT 307-308.) The gang's primary activities are criminal. (RT 309.) Mendez identified Petitioner, aka "El Primero Snoopy Blanco" ("the first white Snoopy") as a "Lynwood Duke". Petitioner also has a tattoo on his stomach which says "Lynwood". (RT 310-314.) Mandez also knew Eduardo Nevarez, aka Eric Nevarez, aka "Tripper" as a "Lynwood Duke". A "Lynwood Dukes" tattoo appears on the back of Nevarez's head. (RT 314-315.)

FN.7 It was stipulated that several items of clothing and property were seized from Petitioner's home pursuant to a warrant on March 7, 2001. (RT 257-258, 270.) Scott also directed a criminalist to take fingernail scrapings from Petitioner's fingers and to take an oral swab from Petitioner's mouth for possible D.N.A. matching. No forensic evidence concerning these items was ever presented.

Without objection, the prosecutor was allowed to pose a "hypothetical" factual scenario to Mendez which mirrored Raul Mata's testimony and permitted Mendez to render his opinion as to whether the actions depicted in that hypothetical were committed for "the benefit of, or at the direction of, or in association with a criminal street gang, in this particular case for the "Lynwood Dukes"? Mendez responded "Yes". (RT 316-318.) Mendez also characterized the appearance of "Lynwood Dukes" graffiti which included a red arrow in the area of the crime scene as a gang statement that somebody had died or would die at that location. Such graffiti serves as a warning not to resist a gang member under penalty of death. (RT 319.) On cross examination Mendez acknowledged that not all crimes committed by gang members are for the "benefit or direction of the gang." Yet, Mendez admitted that whenever he testifies as a gang expert he always renders an opinion that the crimes in question were in fact "committed for the benefit or direction of the gang." (RT 322.)

Petitioner's brother Enoc Santana was not a gang member nor had he ever been convicted of a crime. (RT 458.) Many of his brother's friends occassionally mistake Enoc for Petitioner. (RT 459, 462.) Other "Lynwood Dukes", "Toker" and "Crook", both live in the Hawthorne area. (RT 460-461.)

C. Post Conviction Discovery Proceedings.

On July 4, 2007 (Petitioner, at times, employs the "mailbox rule" for his filing dates, which differ from the receipt and filing dates of the receivers of the documents), following In re Steele's procedure for PC §1054.9 being that informal timely discovery between parties was to be had prior to court enforcement, in re Steele, at 692, Petitioner LEGAL MAILED "DEFENDANT ANDRES SANTANA'S INFORMAL DISCOVERY REQUEST; DECLARATION OF ANDRES SANTANA" (June 30, 2007) to the Los Angeles County District Attorney. A true and correct copy of this request is attached as Exhibit "A" of Appendix "C" of this Petition. Appendix "C" being a true and correct copy of "PETITION FOR WRIT OF MANDAT'S EXHIBITS" (May 18, 2019), LODGED in the California Supreme Court, on May 30, 2019, which is incorporated by reference hererin as Appendix "C". Appendix "C" was accompanied by a "PETITION FOR WRIT OF MANDATE" (May 18, 2019), FILED May 30, 2019, in the California Supreme Court, which a true and correct copy of is attached hereto and incorporated by reference herein as Appendix "D". The district attorney never responded to Exhibit "A" of Appendix "C".

TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

OTHER

Petitioner LEGAL MAILED two (2) more informal discovery requests, true and correct copies of which are attached as Exhibits "B" and "C" of Appendix "C". The district attorney never responded to these discovery requests either.

Given that the district attorney never responded to any of Petitioner's informal discovery requests, on December 22, 2008, Petitioner LEGAL MAILED his PC §1054.9 motion to the California Supreme Court, pursuant to In re Steele, ante.

On January 5, 2008, Petitioner received a communication, dated December 29, 2008, from the California Supreme Court's Deputy Clerk H. Wong ("Wong"). Said communication is attached as Exhibit "D" of Appendix "C".

Wong's communication informed Petitioner that Wong was refusing to file Petitioner's PC §1054.9 motion, unless Petitioner filed it with a writ of habeas corpus.

From December 22, 2008, to January 30, 2009, Petitioner and Wong exchanged various communications wherein Petitioner, to no avail sought the filing, by Wong, of his PC §1054.9 motion.

Given that Petitioner was without further remedy for Wong's failure to carry out the above-mentioned duty, i.e., the filing of the motion, Petitioner filed a "PETITION FOR WRIT OF MANDATE AND DECLARATORY RELIEF" (March 1, 2009) in the California Supreme Court (see Andres Santana v. Hoover Wong, as Deputy Clerk, etc., Case No. S171358, California Supreme Court), wherein, amongst other things, Petitioner sought an order commanding Wong to file the PC §1054.9 motion in the California Supreme Court.

Petitioner subsequently received a communication, dated March 24, 2009, from the California Supreme Court's Supervising Deputy Clerk, Jorge E. Navarette ("Navarette"). Said communication is attached as Exhibit "E" of Appendix "C".

Navarette's communication informed Petitioner that "[i]n order to consider [his] petition, the court [...] requested that [he] submit a copy of [his PC §1054.9 motion]."

Petitioner complied with the California Supreme Court's request and it proceeded to accept, file, and deny without prejudice Petitioner's PC §1054.9 motion to filing it in the trial court. See Exhibits "F" and "G" of Appendix "C". Following the California Supreme Court's instruction, Petitioner filed his PC §1054.9 motion in the trial court and, on June 25, 2009, the trial court denied

it without prejudice because it wanted Petitioner to expand on his good faith efforts to obtain the requested discovery materials from his trial counsel. A true and correct copy of the trial court's "MINUTE ORDER" (June 25, 2009) is attached as Exhibit "H" of Appendix "C".

On August 3. 2009, Petitioner filed "DEFENDANT ANDRES SANTANA'S NOTICE OF MOTION FOR POST CONVICTION DISCOVERY; DECLARATION OF ANDRES SANTANA; VERIFICATION" (July 17, 2009) in the trial court. A true and correct copy of "PETITIONER ANDRES SANTANA'S POST-CONVICTION DISCOVERY MOTION FILED IN THE TRIAL COURT--AT ISSUE IN ENCLOSED WRIT OF MANDATE" (May 18, 2019), FILED May 30, 2019, in the California Supreme Court, along with Appendix "D", is attached hereto and incorporated by reference herein as Appendix "E".

Appendix "E" complied with the trial courts June 25, 2009 requirement, regarding good faith efforts by Petitioner to obtain the requested discovery materials from his trial counsel.

Petitioner's Appendix "E" requested the following twenty-two (22) items of discovery:

A. Request One: The names and addresses of persons the prosecutor intends to call as witnesses at trial.

B. Request Two: The polaroid picture LASO officers took of Defendant, on February 20, 2001, when they stopped him at the North 405 Freeway's on-ramp located on Redondo Beach Boulevard.

C. Request Three: Any and all writings (see Evid. Code §250), documentary and similar evidence regarding the prosecution's inquiry/investigation into the polaroid picture mentioned in Request No. 2, above, to and including the prosecution's raw notes and oral statements received by the prosecutor and/or his agents during the course of the inquiry/investigation.

D. Request Four: The names of the LASO officers that took Richard Morales' picture, on February 20, 2001, during the traffic stop mentioned in Request No. 2, above.

E. Request Five: All writings (see Evid. Code §250), documentary and similar evidence, e.g., field identification cards (f.i. cards), including raw notes and oral statements received, that the LASO officers who stopped Defendant, during the traffic stop mentioned in Request No.2, above, made.

F. Request Six: All writings (see Evid. Code §250), documentary and similar evidence, including raw notes and oral statements received, of the observations and/or identifications made of Defendant by LASO's NORSAT Cardinal Team:

a. Det. Mc Kague.
b. Det. Gonzalez.
c. Det. Cotto.
d. Det. Herron.
e. Det. Hickey.
f. Det. Arrellano.
g. Sergeant Shupe.

G. Request Seven: All writings (see Evid. Code §250), documentary and similar evidence, including raw notes and oral statements received, of the observations and/or identifications made of Defendant by LASO's Internal Criminal Investigation Bureau Surveillance Team.

H. Request Eight: California Department of Corrections and Rehabilitation's Parole Agent Bonita Blake's Record of Supervision for 2-20-01, and/or any and all writings (see Evid. Code §250), documentary and similar evidence, which she made of her meetings with Defendant and contacts with LASO personnel, from 2-18-01 to 3-7-01.

I. Request Nine: A picture of the tattoo Defendant has on the back of his head.

J. Request Ten: Mug shot/booking photo of defendant taken at the LASO's Lennox Station, on March 7, 2001.

K. Request Eleven: All pictures taken of Defendant at the LASO's Lennox Station, on March 7, 2001.

L. Request Twelve Records/Logs, writings (see Evid. Code §250), documentary and similar evidence that show the cell mates Defendant had, on March 7, 2001, at the LASO Lennox station.

M. Request Thirteen: The names, addresses, location or hang out, aka's/monikers/nicknames and aliases of all Lynwood Dukes gang

members, whether active or inactive, and their associates and/or affiliates that reside(d) and/or were known to law enforcement to be in the cities of Hawthorne, Inglewood, Lawndale, Lennox, Gardena, Torrance and Redondo Beach.

N. Request Fourteen: The prosecution's trial gang expert South Gate police officer Mendez's written or recorded statements, including any reports or statements which he made in conjunction with this case.

O. Request Fifteen: Any and all writings (see Evid. Code §250), documentary or similar evidence regarding and/or reviewed in the course of the prosecution's trial gang expert south gate police officer Mendez's investigation of the Lynwood Dukes, which he worked on with the Sheriff's Department and which he used to base his opinions given at trial.

P. Request Sixteen: The names, aka's/monikers/nicknames, aliases and addresses of the investgators and gang members whom the prosecution's trial gang expert, South Gate police officer Mendez, spoke to and which he used to base his opinions that Defendant was a member of the Lynwood Dukes, identified as Snoopy, to and including any and all writings (see Evid. Code §250), documentary or similar evidence regarding and/or documenting said conversations.

Q. Request Seventeen: Any and all writings (see Evid. Code §250), documentary or similar evidence which proves the establishment of South Gate police officer Mendez's qualifications as a gang expert, including, but not limited to:

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///

a. The date he joined the California Gangs Investigators Association.

b. The number of seminars and conferences of the California Gangs Investigators Association which he has attended, including:

(i) the date, time and place of the seminars and conferences;

(ii) the person's in charge of the seminars and conferences and/or who were present at them;

(iii)and the sum and substance/content discussed, including the gangs that were discussed.

c. The number of meetings which he has attended with Sherriff's Departments, along with other cities involving gangs throughout the County, including:

(i) the date, time and place of the meetings;

(ii) the person(s) in charge of the meetings and/or who were present at them;

(iii) and the sum and substance/content discussed, including the gangs that were discussed.

d. the number of meetings which he has had with gang investigators from the Sheriff's Department Operations Safe Street, including:

(i) the date, time and place of the meetings;

(ii) the person(s) in charge of meetings and/or who were present at them;

(iii) and the sum and substance/content discussed, including the gangs that were discussed.

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R. Request Eighteen: The prosecution's preliminary hearing's gang expert, LASO's Deputy Dawn Retzlaff, written or recorded statements which she made in conjunction with this case.

S. Request Nineteen: Any and all writings (see Evid. Code §250), documentary and similar evidence which proves the establishment of the Lynwood Dukes "primary activities" (see Penal Code §186.22(f)) being the following:

a. Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245 of the Penal Code;

b. Robbery, as defined in Chapter 4 (commencing with section 211) of Title 8 of Part 1 of the Penal Code;

c. Unlawful homicide, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code;

d. The sale of controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code;

e. Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivision (a) and (b) of Section 12034 of the Penal Code;

f. Burglary, as defined in Section 459 of the Penal Code;

g. Felony extortion, as defined in Section 518 and 520 of the Penal Code;

h. Felony vandalism, as defined in paragraph (1) of subdivision (b) of section 594 of the Penal Code; and

i. Theft and unlawful taking of a vehicle, as defined in Section 10851 of the Vehicle Code.

T. Request Twenty: Written or recorded statements of witnesses or reports of the statements of witnesses, to and including raw notes, whom law enforcement interviewed regarding this case, on 2-18-01 and on any other date.

U. Request Twenty-One: The prosecution's trial witness Raul Mata's criminal history, background history, psychological history, to and including any and all medical attention, tests and their results, given and/or that he was submitted to, on 2-28-01, at the place of the incident in question or any other place.

V. Request Twenty-Two: Monies, favors, benefits, inducements and/or any other form of compensation/gratuity given/provided to the prosecution's trial witness Raul Mata, in relation to and/or because of this case, and the purpose the aforementioned was given/provided to him for.

Each of the twenty-two (22) discovery requests was accompanied by its very own distinct In re Steele statutory and constitutional categories that made them discoverable and/or produceable pursuant to PC §1054.9.

On August 20, 2009, the trial court appointed Robin J. Yanes to represent Petitioner in the trial court. A true and correct copy of the trial court's "APPOINTMENT ORDER PROFESSIONAL APPOINTEE COURT EXPENSE" (August 20, 2009) is attached as Exhibit "I" of Appendix "C". [FN.8.]

From 2009 to 2015, Petitioner and Yanes kept in constant communication and conferred relative to the production, from the district attorney, of the post conviction discovery materials requested from Petitioner in Appendix "E". [FN.9.] The district attorney never produced the materials requested in Appendix "E".

FN.8 But see Appendix "D"'s pp.31-33 (setting forth that the appointment of Robin J. Yanes as post conviction counsel was DUBIOUS concerning counsel's duties in acquiring post conviction discovery materials from the district attorney's office); see also Exhibit "Q" of Appendix "C" (being a January 30, 2019 transcript ordered augmented to the record by the Court of Appeals denoting Robin J. Yanes stating Los Angeles County Superior Court Judge Hahn appointed him with the following DUBIOUS instructions: "I don't want you to take over anything[,]" "just [...] facilitate and try to help him get whatever it is he's trying to get from the D.A.'s office." [See, p. 33, ¶2, of Appendix "D".]).

FN.9 Appendix "B", p. 4, ¶2 (trial court's Order denying post conviction discovery motion [Appendix "E"]) erroneously sets forth that Mr. Yanes "involvement and assistance ended in 2011."

Petitioner kept Yanes informed of his prison transfers, and change of address, as well. True an correct copies of two (2) of "DEFENDANT ANDRES SANTANA'S NOTICE OF CHANGE OF ADDRESS; VERIFICATION" are attached as Exhibits "J" and "K" of Appendix "C". See Exhibits "J" and "K"'s "Proof of Service" denoting November 2014, and July 2015, respectively, as the dates the such were LEGAL MAILED to the trial court, and to Yanes and the district attorney.

In response to Exhibit "K" of Appendix "C", the trial court generated an "ORDER RE: NOTICE OF CHANGE OF ADDRESS//MOTION PURSUANT TO PENAL CODE SECTION 1054.9" (August 6, 2015). A true and correct copy of this Order is attached as Exhibit "L" of Appendix "C".

The Order erroneously set forth that Petitioner's Motion was denied on June 25, 2009, and, therefore, there were no post conviction discovery proceedings current in the court. The trial court confused Petitioner's first PC §1054.9 motion--denied without prejudice so Petitioner could expand on his good faith efforts to obtain the post conviction discovery materials from his trial counsel--with the second PC §1054.9 motion, which was pending with the court. See p. 11, ¶9, 4th sentence - p. 12, ¶3, ante.

In response to Exhibit "L" of Appendix "C", Petitioner, on August 14, 2015, filed "DEFENDANT ANDRES SANTANA'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OR, ALTERNATIVELY, EX PARTE APPLICATION FOR NON-DISPOSITIVE RELIEF IN THIS ACTION; MEMORANDUM OF POINTS AND AUTHORITIES; VERIFICATION" (August 14, 2015) in the trial court. A true and correct copy of this motion is attached as Exhibit "M" of Appendix "C".

Exhibit "M" of Appendix "C", at 5:20-6:8, 16-26; and 9:17-23, informed the trial court that it had confused PC §1054.9 motions and that his Motion was indeed still pending in the trial court. Given that Petitioner received no response from the trial court, on September 23, 2015, Petitioner filed "DEFENDANT ANDRES SANTANA'S EX PARTE APPLICATION FOR AN ORDER TO CONTINUE [...] HEARING [...] TELEPHONICALLY [etc.]" (September 16, 2015). A true and correct copy of this application is attached as Exhibit "N" of Appendix "C".

Exhibit "N" of Appendix "C" went unanswered by the trial court.

On December 8, 2015, the trial court generated "ORDER RE: NOTICE OF CHANGE OF ADDRESS//MOTION PURSUANT TO PENAL CODE SECTION 1054.9" (December 8, 2015). A true and correct copy of this Order is attached as Appendix "B" of this Petition.

Appendix "B" corrected---without mention--the trial court's confusion as to Petitioner's PC §1054.9 motions and DENIED Petitioner's actual Motion (Appendix "E"). The trial court, however, did not entertain, address, include findings of fact, or mention in any way, shape, or form any of Petitioner's twenty-two (22) post conviction discovery requests set forth in Petitioner's Motion (Appendix "E"), much less rule on their merits.

Given that the trial court refused to perform its ministerial duty to hear Petitioner's Motion and decide the merits of it, and being that Petitioner was without further remedy to have the trial court correct its error and give Petitioner a decision on the merits of his Motion (Appendix "E"), Petitioner subsequently filed Writs of Mandate in the reviewing courts of California, which were DENIED. The California Supreme Court's DENIAL is attached as Appendix "A".

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REASONS FOR GRANTING THE PETITION

I.

Rule 10(c) of the Rules of the Supreme Court of the United States. This Court should exercise its judicial discretion to grant a writ of certiorari so that it can clearly establish Federal Law concerning the process due to state prisoners when seeking statutory post conviction discovery in state courts via a protected liberty interest under the Due Process Clause of the U.S. Constitution, Fourteenth Amendment. The process due in this context, has not been settled by this Court given that it has not been until the last couple of decades that the states have begun to rapidly evolve post conviction discovery statutes so that prisoners, like Petitioner, can prove their innocence. See, e.g., D.A.'s Office v. Osborne (2009) 557 U.S. 52, 79, 129 S.Ct. 2308, 174 L.Ed.2d 38, fn. 2 (Alito, J., concurring ("[f]orty six states and the District of Columbia and the Federal Government , have recently enacted DNA testing statutes.")). Additionally, certiorari should also be granted so that state prisoners, like Petitioner, can have clearly established Federal Law regarding the process due to them in the aforementioned post conviction discovery context, and, thereby, have the such and be able to seek federal habeas corpus relief if needed, and not be precluded from doing so by the Antiterrorism and Effective Death Penalty Act ("AEDPA").

II.

Rule 10(c) of the Rules of the Supreme Court of the United States. This Court should exercise its judicial discretion to grant a writ of certiorari because California has decided the important federal question regarding due process being denied to Petitioner using that term in its primary sense of an opportunity to be heard and to defend its substantive right in a way that conflicts with Brinkerhoff-Faris Trust & Savings Company v. Hill (1930) 282 U.S. 673, 678, 50 S.Ct. 451, 74 L.Ed. 1107, given that Petitioner's post conviction discovery motion was denied without a decision/opinion on the merits of the motion, or findings of fact.

III.

Rule 10(c) of the Rules of the Supreme Court of the United States. This Court should exercise its judicial discretion to grant a writ of certiorari because California's procedural framework for hearing post conviction discovery motions transgresses any recognized principle of fundamental fairness rooted

in the fundamental principle of justice of a litigant's day incourt under the Due Process Clause of the U.S. Constitution, Fourteenth Amendment.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE ESTABLISHMENT OF FEDERAL LAW CONCERNING THE PROCESS DUE TO STATE PRISONERS WHEN SEEKING STATUTORY POST CONVICTION DISCOVERY IN STATE COURTS VIA A PROTECTED LIBERTY INTEREST UNDER THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION, FOURTEENTH AMENDMENT, IS NEEDED

Under 28 U.S.C. §2254(d)(1), "[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement 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 ina 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[.]"

The California Supreme Court, without opinion, denied Petitioner's claim that "The State of California's PC §1054.9 Post Conviction Procedures Violate The Fourteenth Amendment of The United States." See Appendix "D", p. 26. Pursuant to D.A.'s Office v. Osborne (2009) 557 U.S. 52, 129 S.Ct. 2308, 174 L.Ed.2d 38, Petitioner set forth that he had a liberty interest, under the Due Process Clause of the U.S. Constitution, Fourteenth Amendment, to post conviction discovery as the state, by statute--Pc §1054.9--had entitled him to file a motion for the such "to prove himself innocent and get out of jail." See, Osborne, at 67.

Given that the consideration of the claim had to be considered within the framework of the state's procedures for post conviction relief, and, for over twelve (12) years Petitioner had been trying to obtain a hearing on the merits of his motion--to no avail, Petitioner was unable to vindicate his right to obtain the post conviction discovery materials entitled to him by PC §1054.9, thus resulting in the State of California's post conviction discovery procedures clearly taking away Petitioner's protected entitlement of obtaining post conviction discovery materials. See Appendix "F" (detail of the procedures the State of California has provided Petitioner to obtain post conviction discovery materials, which proved fruitless).

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There is no decision by this Court which clearly establishes the process due to Petitioner in the context set forth herein. Osborne only provides a standard of review for evaluating a state's procedures for post conviction relief, i.e., the claim must be considered within the framework of the State's procedures for post conviction relief questioning whether they "offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," or "transgresses any recognized principle of fundamental fairness in operation." Osborne, at 69 (quoting Medina v. California (1992) 505 U.S. 437, 446, 448, 112 S.Ct. 2572, 120 L.Ed.2d 353 (internal quotation marks omitted); see Herrera v. Collins (1993) 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (applying Medina to post conviction relief for actual innocence)).

As set forth in Justice Alito's concurring opinion in Osborne: "[T]his is an area that should be (and is being) explored 'through the workings of normal democratic processes in the laboratories of the States.'" Osborne, at 79 (quoting Atkins v. Virginia (2002) 536 U.S. 304, 326, 122 S.Ct. 2242, 153 L.Ed.2d 335 (Rehnquist, C. J., dissenting)).

As a result, the process due to state prisoners in this context is of paramount import and this Court should clearly establish such process. This Court may upset a state's post conviction relief procedures if they are fundamentally inadequate to vindicate the substantive rights provided. Osborne, at 69. Such is the case here as Appendix "F" demonstrates.

Petitioner seeks review in this Court for the requested relief prior to pursuing a federal writ of habeas corpus in the United States District Court. Without this Court clearly establishing Federal Law, as to the process due in the context presented herein, Petitioner will face a 28 U.S.C. §2254(d)(1) obstacle, in the District Court, that he may not be able to surmount.

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II.

PETITIONER HAS A SUBSTANTIVE RIGHT IN ITS PRIMARY SENSE OF AN OPPORTUNITY TO BE HEARD AND TO DEFEND HIS POST CONVICTION DISCOVERY MOTION

For twelve (12) years Petitioner has been trying to get a hearing on his post conviction discovery motion. On December 8, 2015, the Superior Court of the State of California for the County of Los Angeles ("trial court") DENIED Petitioner's post conviction discovery motion, without first informing Petitioner a hearing was to be had or giving him an opportunity to defend it.

The trial court's Order (Appendix "B") did not entertain, address, nor mention in any way, shape or form any of Petitioner's twenty-two (22) post conviction discovery requests set forth in the motion, much less rule on their merits or set forth findings of fact concerning the requests.

In Brinkerhoo-Faris Trust & Savings Company v. Hill (1930) 281 U.S. 673, 50 S.Ct. 451, 74 L.Ed 1107, this Court held that a trial court's dismissal of a bill filed to enjoin the collection in part of a tax based on an alleged discriminatory assessment without opinion or findings of fact, and the Missouri Supreme Court's subsequent DENIAL of a petition for rehearing WITHOUT OPINION, had to be REVERSED, because the such denied plaintiff due process of law using that term in its primary sense of an opportunity to be heard and to defend its substantive right. Brinkerhoff, at 673, 678.

Under the settled law of the state, the remedy sought by the Brinkerhoff plaintiff was the only one available. He had invoked the appropriate judicial remedy provided by the state. Id., at 678. The plaintiff asserted an invasion of its substantive right under the Federal Constitution to equality of treatment concerning the seizure of payment of property of taxes alleged to be unlawful. Id. That the bill in equity was appropriate and that the court had the power to grant relief was not questioned. Id. If the judgement from the state courts were permitted to stand though, deprivation of the plaintiff's property would be accomplished without the plaintiff ever having had an opportunity to defend against the exaction. The state courts refused to hear the plaintiff's complaint and denied it relief, not because of lack of power or because of any demerit in the complaint, but because, assuming power and merit, the plaintiff did not first seek an administrative remedy which, in fact, was never available, and which was not open to the plaintiff. Thus, by denying to it the only remedy ever available for the enforcement of its right to prevent the seizure of its property,

the judgement deprived the plaintiff of its property. Id., at 679.

This Court made it abundantly clear when it stated: "[O]ur decision in the case at bar is not based on the ground that there has been a retrospective denial of the existence of any right or a retroactive change in the law of remedies. We are not now concerned with the rights of the plaintiff on the merits, [....] Our present concern is solely with the question whether the plaintiff has been accorded due process in the primary sense,--whether it has had an opportunity to present its case and be heard in its support[,]" (id., at 681) and "[w]hile it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it. Id., at 682.

The State of California clearly deprived Petitioner of his due process right--in the primary sense--of an opportunity to present his case and be heard in support. For over (12) years Petitioner has been trying to obtain a hearing wherein the merits of his post conviction discovery motion can be heard and decided--and, thereby, obtain evidence which proves he is innocent of the two (2) murder robberies he is serving a sentence of life without the possibility of parole for.

When the trial court finally issued an Order (Appendix "B") on the post conviction discovery motion, it made no mention of the post conviction discovery requests, their merit, or issue findings of fact concerning the requests for discovery. Instead, in a similar vein to Brinkerhoff (wherein the trial court denied relief stating an administrative remedy that was never available was not pursued by the Plaintiff, and no mention of the merits of his complaint was made), the trial court simply recited previous court filings by Petitioner which had nothing to do with the post conviction discovery motion. Moreover, it never informed Petitioner that it was holding a hearing wherein the motion could be DENIED. Subsequently, when Petitioner sought writs of mandate in the state's reviewing courts, the same thing occurred. There was only silent denials of the mandate petitions. In essence, Petitioner's due process right in the primary sense for an opportunity to present his case and be heard in support of his post conviction discovery requests is **NOW NIL.** Petitioner was afforded an opportunity

to protect it. By the same token, the discovery materials which the post conviction discovery motion sought, are NOW DENIED to Petitioner. Clearly, California's trial court decision, and the state's reviewing court's decisions, mirror the state of Missouri's comportment in Brinkerhoff. As such, California's decision, in Petitioner's case, is in conflict with Brinkerhoff.

III.

CALIFORNIA'S PROCEDURAL FRAMEWORK FOR HEARING POST CONVICTION DISCOVERY MOTIONS VIOLATES THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION, FOURTEENTH AMENDMENT

Petitioner in I and II, ante, has proven that he has an "entitlement to prove his innocence even after a fair trial has proved otherwise" (see Osborne, at 67), i.e., Petitioner has a liberty interest to prove his innocence. As a result, this state created right begets yet other rights to procedures essential to the realization of the parent right. Id., at 68. The state, however, has more flexibility in deciding what procedures are needed in the context of post conviction relief, given that Petitioner no longer bears the presumption of innocence. Id., at 69.

The procedures the State of California has afforded Pettitioner (denoted in Appendix "F"), however, for the realization of his post conviction right to obtain discovery materials that will prove his innocence, are inconsistent with the traditions and conscience of our people and with any recognized principle of fundamental fairness. Cf. osborne, at 70 (Alaska's post conviction relief procedures did not do the same--violate due process). The procedures California afforded Petitioner included: informal discovery requests (pursuant to the California Supreme Court's controlling case of In re Steele) to the county district attorney (which were never answered); DUBIOUS and limited post conviction discovery counsel appointments that result in the requested discovery materials not being produced; no hearings on the merits of the post conviction discovery motions had, nor decisions on the merits rendered; and extraordinary writs to the stat's reviewing courts denied without opinion or hearing and not serving to compel the trial court to hear and decide the merits of the post conviction discovery motion.

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These procedures, instead of serving to vindicate Petitioner's right to have the merits of his post conviction discovery motion heard and decided, stripped him of the such without affortding him some real opportunity to protect it. Consequently, this Court "may upset [the] [s]tate's post conviction relief procedures." Osborne, at 69. Petitioner has never had his day in court for his post conviction discovery motion.

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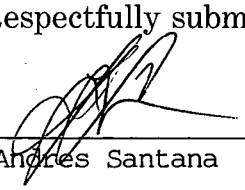
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Andres Santana

Date: SEPTEMBER 7, 2019