

19-6855
No.

IN THE

SUPREME COURT OF THE UNITED STATES

JOSELUIS MORALES — PETITIONER
(Your Name)

vs.

GREG LEWIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseluis Morales (CDCR # P63392)
(Your Name)

480 Alta Rd.
(Address)

San Diego, CA. 92179
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. Is it an abuse of discretion when the federal courts do not follow directives from the United States Supreme Court on how to apply res judicata?
- II. Does the Due Process and Equal Protection Clauses have enforceable authority in this matter?

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:

Osborne, Institutional Gang Investigator Lieutenant;

Barneburg, Institutional Gang Investigator Sergeant;

Burt, Office of Correctional Safety Special Agent;

Evangelista, Office of Correctional Safety Special Agent;

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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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals 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[X] is unpublished.

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

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.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[] is unpublished.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[] is unpublished.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 2-27-19.

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: * 8-28-19, and a copy of the order denying rehearing appears at Appendix A.

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).

* Mandate was filed on 9-5-19 (Appendix A)

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

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.

STATEMENT OF THE CASE

The Petitioner was successful at the state level in proving that prison officials were unconstitutionally using race or ethnicity to place inmates on lockdown without due process. The state appellate court affirmed the trial court ruling and published the opinion. See *In re Morales* (2013) 212 CalApp4th 1410.

Before an evidentiary hearing had taken place in that matter, the Respondent in that matter moved the court to dismiss the case based on the allegation that the Petitioner had been removed from the lockdown and placed in segregation for the purpose of validating the Petitioner as an associate to a prison gang and to be housed in the Security Housing Unit (SHU). The judge found the timing of the validation process suspicious and denied the motion to dismiss, ruling that the hearing would be in regards to the two year lockdown in question.

On October 19, 2010, the Petitioner was removed from his housing in general population (GP) and placed in a holding cell for the next three days, where there was no sleeping area. The Petitioner had been served validation documents and notified that he would have an interview in three days. The Petitioner was not given any access to the prison law library before the interview taking place and was not assigned an investigative employee to assist the Petitioner to prepare for the interview. (Exhibits A-E, validation packet served by Lieutenant Osborne and Sergeant Barneburg, Institutional Gang Investigators)

California prison regulations mandate a direct link and an additional two other points, to prove and validate an inmate to be an associate or a member of a prison gang. California Code and Regulations, title 15 § 3378 (c)(4). A direct link must be without interruption or diversion and without

an intervening agency or step. *In re Furnace* (2010) 185 CalApp4th 649, 661 (no middle man). The direct link must be to a person and not a gang in general. *In re Villa* (2012) 209 CalApp4th 838,852 ; 15 CCR § 3378(c)(4).

The validation packet served (Exhibits A-E) did not disclose the name of a validated person nor how there was a direct link between the Petitioner and a validated member or associate. The validation packet did not allege that the missing information was suppressed for safety or security purposes. The direct link was instead tied to an incident where the confidential informant does not name Petitioner nor allege that he witnessed Petitioner taking part in the incident. (Exhibit A)

On October 21, 2010, Lieutenant Osborne and Sergeant Barneburg gave Petitioner notice that the validation packet would be submitted to the Office of Correctional Safety for approval. On February 24, 2011, Special Agents Burt and Evangelista approved to validate Petitioner as an associate to a prison gang. (Exhibit G) The decision to validate Petitioner did not make a written statement on the findings nor did the decision allege that the written statement was suppressed for safety or security purposes. The decision to validate Petitioner shows a different item as the direct link than that identified initially. This item was a written material that allegedly identified the Petitioner as having a leadership in Petitioner's housing unit to carry out directives of a prison gang. (Cf. Exhibits B and G) This item did not identify a validated person nor disclose how the Petitioner had a direct link to this person. (Id) The validation decision did not allege that information was suppressed for safety or security purposes. (Exhibit G)

On January 19, 2017, Petitioner was given a consultation hearing

by a parole board Deputy Commissioner to review Petitioner's prison conduct and efforts of rehabilitation. The validation finding was identified as Petitioner's latest misconduct and Petitioner was notified that the validation finding would be an unfavorable factor for the purposes of parole suitability.

Due to the validation finding, Petitioner would be denied good time credits. See California Penal Code § 2933.6. Without the validation finding, the Petitioner would be eligible to 20 percent good time credits on his sentence of 25 years to life, making him eligible for parole on the twentieth year. Petitioner has been incarcerated since 1998 for a youth offender crime and will not be eligible for parole until the twentififth year. Prior to the validation finding, the Petitioner had been disciplinary free since 2006.

The Petitioner sought relief from the state courts by filing a petition for a writ of habeas corpus, raising: (1) the validation was an act of retaliation for Petitioner accessing the courts to challenge the racial lockdowns; (2) there was no evidence of a direct link to validate Petitioner; (3) there was no written statement by the factfinder to validate Petitioner. The state courts denied relief.

Petitioner then sought relief from the federal courts, raising a 42 USC 1983 civil complaint with the same claims. The Defendants filed a motion to dismiss based on the res judicata rule. Petitioner opposed the motion based on the exception to res judicata per state law. The district court never addressed the state law raised by Petitioner and dismissed the case. Petitioner timely appealed and was denied relief.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit Court of Appeals has ignored the standard set by the United States Supreme Court in respect to the application of res judicata. The Federal Full Faith and Credit statute (28 USC § 1738) requires federal courts to give to a state court judgment the same preclusion effect as would be given that judgment under the law of the State in which the judgment was rendered. *Migra v Warren City School District Board of Education* (9184) 465 US 75, 81.

At one point the Ninth Circuit acknowledged that under California law there was an exception to res judicata to "special proceedings" and allowed a §1983 case to go forward. See *Honey v Distlerath* (9th Cir 1999) 195 F3d 531. However, in that decision the Ninth Circuit did not completely identify what was to be considered to be a "special proceeding" under California law. *Id.*

The Petitioner here presented the federal courts the applicable California law that identified petitions for writ of habeas corpus to be a "special proceeding". "This court's decisions have long characterized a habeas corpus proceeding as a special proceeding". *Mass v Superior Court* (2016) 1 Cal5th 962, 979. The state supreme court has held over the decades that a "habeas corpus proceeding is not a criminal action" and though the Legislature has labeled the habeas corpus proceeding a "special proceeding of a criminal nature" that it is not dispositive. *Id.* "It is a special proceeding and not entirely analogous to either category". *In re Scott* (2003) 29 Cal4th 783, 816 fn6. "Since 1872, judicial remedies have been divided into two classes: actions and special proceedings. (Code Civil Procedures § 21) An action is defined as an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of right,

the redress or prevention of a wrong, or the punishment of a public offense. (Id. § 22; see Id. § 30 [defining "civil action"])"". People v Yartz (2005) 37 Cal4th 529, 536. "A special proceeding is every other remedy that is not an action. (Id. § 23)". Id. Habeas corpus petitions are used by prisoners to present a question of law. In re Jackson (1964) 61 Cal2d 500, 504.

The district court never addressed the Petitioner's citation of special proceedings being applicable to habeas corpus petitions and instead cited other precedent to evade the matter altogether. The Ninth Circuit allowed the district court to decide whether the appeal made was frivolously. (See Referral Notice) Petitioner objected to the order and raised that the issue must be reviewed by the Ninth Circuit under de novo review per its own standard. The district court ruled that the appeal was frivolous and recommended for the appeal to be dismissed. The Ninth Circuit ordered the Petitioner to explain why the appeal was not frivolous, of which the Petitioner filed a statement explaining why the appeal was not frivolous, citing the same precedent herein. Without addressing the state law, the Ninth Circuit made a summary judgment and dismissed the appeal as frivolous. The Petitioner made his last effort and filed for a rehearing en banc to raise the omission but the Ninth Circuit evaded the duty to review the res judicata issue de novo and made a summary denial to close the case with no further filings. See Clark v Bear Stearns and Company (9th Cir 1992) 966 F2d 1318, 1320 (de novo review on res judicata application).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11-22-19

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSELUIS MORALES — PETITIONER
(Your Name)

VS.

GREG LEWIS — RESPONDENT(S)

PROOF OF SERVICE

I, Joseluis Morales, do swear or declare that on this date, November 22, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

State Attorney General, 455 Golden Gate Ave., San Francisco, CA. 94102-7004

Office of the Clerk, SCOTUS, Washington, DC 20543

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

Executed on November 22, 2019


(Signature)