

No. 21-5866

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SUPREME COURT, U.S.

**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES

Francisco Xavier Garibay, Jr. PETITIONER  
(Your Name)

vs.

Ralph Diaz — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI 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 CERTIORARI

Francisco Xavier Garibay, Jr.  
(Your Name)

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## **QUESTIONS PRESENTED**

Whether fair-minded jurists could disagree with a reviewing courts decision to ignore a claim of actual innocence, not presented for review in prisoner's direct appeal nor first habeas petition, despite prisoners overwhelming showing of actual innocence.

Where the "due process of law" clause of the U.S. Constitution, Amendment XIV, regarding the State's obligation to follow the United States Constitution including the Due Process Clause is being deprived by the Ninth Circuit Court of Appeals and actual innocence is completely being overlooked which deprives Petitioner of being allowed to prove Factual Innocence to his State charge and Conviction.

Where case law precedent in this very Court contradicts the Ninth Circuit of Appeal's opinion and decision on Xx xx, 2021 that the Supreme Court's job is to keep in uniformity with other top Appeals Courts decisions and State Supreme Court decisions under the Supremacy Clause of the U.S. Constitution?

Where the Ninth Circuit Court of Appeals had failed to recognize the U.S. Constitution's miscarriage of justice exception for a habeas corpus procedural defect and that an actual innocence claim leading toward a wrongful conviction in a state court should be an exception to such procedural defect?

## **PARTIES TO THE PROCEEDINGS BELOW**

The petition arises from a habeas corpus proceeding in which Petitioner, Francisco Carbajal, sought relief from the Ninth Circuit Court of Appeals.

## **LIST OF RELATED PROCEEDINGS**

19-CV-00956-SKO  
19-CV-01628\_EPG  
20-71428  
S256824 S256822 10/09/2019  
14CR009743 08/13/2019  
S254995 06/26/2019  
F079377 06/06/2019  
F078921 04/10/2019  
17225, 20873 03/20/2019  
17-CV-00143-SKO 09/24/2018  
F071474 03/24/2017

## **TABLE OF CONTENTS**

	Page
QUESTIONS PRESENTED .....	1
PARTIES TO THE PROCEEDINGS BELOW .....	1
LIST OF RELATED PROCEEDINGS .....	1
INDEX TO APPENDICES .....	2
TABLE OF AUTHORITIES .....	2
OPINIONS BELOW .....	4
STATEMENT OF JURISDICTION .....	4

CONSTITUTIONAL PROVISIONS .....	4
STATEMENT OF THE CASE .....	4
A. The District Court Affirmed Carbajal's Conviction And Denied Post-Conviction Relief Based On a Decision Contrary to Reasonable Application of Federal Law. ....	4
B. Carbajal Demonstrated His Conviction Was Obtained Through An Improper Jury instruction that Omitted an Element of the Offense In Violation Of U.S. v. Gaudin, 515 U.S. 506 ..	4
C. The CCA Entered A Cursory Denial Of Habeas Relief. ....	4
REASONS FOR GRANTING THE WRIT .....	4
I. THE US COURT OF APPEALS FAILED TO CONSIDER CALIFORNIA COURTS' UNREASONABLE APPLICATION OF FEDERAL LAW IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS. ....	5
II. THAT CARBAJAL'S CONVICTION REMAINS IS PREMISED ON THE PRESUMPTION THAT DEFERENCE TO A STATE COURTS DECISION - A DECISION SUBJECTED TO A DEGREE OF CERTITUDE - HAS SINCE BEEN DISCOVERED TO BE IN VIOLATION OF DUE PROCESS. ....	5
II. CARBAJAL'S CONVICTION WOULD VIOLATE THE UNITED STATES CONSTITUTION BECAUSE HE IS ACTUALLY INNOCENT OF THE ATTEMPTED RAPE OF SYLVIA CARBAJAL. ....	5
CONCLUSION .....	5

#### INDEX TO APPENDICES

APPENDIX A	Order of the Ninth Circuit Court of Appeals Francisco Xavier Carbajal v. Ralph Diaz, No. 20-15535 (May 14, 2021)
APPENDIX B	Order of the E.D. Cal. Adopting Findings and Recommendation, Denying Petition for Writ of Habeas Corpus, and Declining to Issue Certificate of Appealability
APPENDIX C	E.D. Cal. Findings and Recommendation to Dismiss Petition for Writ of Habeas Corpus
APPENDIX D	E.D. Cal. Order Adopting Findings and Recommendations, Order Dismissing Successive Petition for Writ of Habeas Corpus, Order Directing Clerk of Court to Enter Judgment and Close Case, and Order Declining to Issue Certificate of Appealability.
APPENDIX E	E.D. Cal. Findings and Recommendation to Dismiss Successive Petition for Writ of Habeas Corpus, Order Directing Clerk of Court to Assign District Judge
APPENDIX F	E.D. Cal. Order Denying Petition for Writ of Habeas Corpus
APPENDIX G	Cal. 5 <sup>th</sup> District Court of Appeal Opinion
APPENDIX H	Ninth Circuit Court of Appeals Application for Certificate of Appealability
APPENDIX I	Ninth Circuit Court of Appeals Supplemental Application for Certificate of Appealability with Suggestions in Support

#### TABLE OF AUTHORITIES

CASES	PAGE NO.
Apprendi v. New Jersey, 530 U.S.	App. H-6
Arizona v. Fulminante, 499 U.S. 279	App. H-10
Barefoot v. Estelle, 463 U.S. 880	App. H-1

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR A WRIT OF CERTIORARI

Through his Actual Innocence and other Due Process claims, Francisco Carbajal asks this Court to resolve important constitutional questions so that California does continue to punish an innocent man.

The Ninth Circuit Court of Appeals disposed of Carbajal's constitutional claims challenging his conviction in a terse and largely boilerplate decision.

The summary decision ignored uncontradicted evidence that completely negates the State's case against Carbajal at trial and instead relies on unreasonable deference to the lower courts opinion.

Carbajal now seeks review of the decision below which wrongly, and under an inappropriately high standard, rejected his comprehensive showing of actual innocence.

**OPINIONS BELOW**

The Xx xx, 2021 order of the Ninth Circuit Court of Appeals under review is unreported. (App.-1a.) 2

**STATEMENT OF JURISDICTION**

The Ninth Circuit Court of Appeals issued its order on Xx xx, 2021. (App.-1a.) This Court has jurisdiction under 28 U.S.C. §1257(a).

**CONSTITUTIONAL PROVISIONS**

The Sixth Amendment provides that a criminal defendant enjoys the right to have a jury determine his guilt of every element of his crime beyond a reasonable doubt.

The Fourteenth Amendment provides in relevant part that "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." U.S. Const. Amend. XIV.

**STATEMENT OF THE CASE**

- A. The District Court Affirmed Carbajal's Conviction And Denied Post-Conviction Relief Based On a Decision Contrary to Reasonable Application of Federal Law.**
- B. Carbajal Demonstrated His Conviction Was Obtained Through An Improper Jury instruction that Omitted an Element of the Offense In Violation Of U.S. v. Gaudin, 515 U.S. 506.**
- C. The CCA Entered A Cursory Denial Of Habeas Relief.**

## REASONS FOR GRANTING THE WRIT

I. THE US COURT OF APPEALS FAILED TO CONSIDER CALIFORNIA COURTS' UNREASONABLE APPLICATION OF FEDERAL LAW IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS

II. THAT CARBAJAL'S CONVICTION REMAINS IS PREMISED ON THE PRESUMPTION THAT DEFERENCE TO A STATE COURTS DECISION - A DECISION SUBJECTED TO A DEGREE OF CERTITUDE - THAT HAS SINCE BEEN DISCOVERED TO BE IN VIOLATION OF DUE PROCESS - IS BINDING WITHOUT EXCEPTION

II. CARBAJAL'S CONVICTION WOULD VIOLATE THE UNITED STATES CONSTITUTION BECAUSE HE IS ACTUALLY INNOCENT OF THE ATTEMPTED RAPE OF SYLVIA CARBAJAL

The lower federal courts and state jurisdictions are split regarding the scope of constitutional protections for the actually innocent and the standard for determining if a person has made a sufficient showing. See *Graves v. Cockrell*, 351 F.3d 143, 151 (5th Cir. 2003) (claims of actual innocence are not cognizable on federal habeas review); *Carriger v. Stewart*, 132 F.3d 463, 476 (9th Cir. 1997) (petitioner "must affirmatively prove that he is probably innocent," in derogation of panel opinion requiring clear and convincing proof); *Cornell v. Nix*, 119 F.3d 1329, 1335 (8th Cir. 1997) (standard "is at least as exacting as the clear and convincing evidence standard, and possibly more so"); *State v. Beach*, 302 P.3d 47, 54 (Mont. 2013) (clear and convincing evidence that no reasonable juror would convict); *People v. Washington*, 665 N.E.2d 1330, 1337 (Ill. 1996) (evidence of such conclusive character as would probably change the result on retrial); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 543 (Mo. 2003) (requiring "a clear and convincing showing of actual innocence that undermines confidence in the correctness of the judgment"); *In re Lawley*, 179 P.3d 891, 897 (Cal. 2008) (evidence of innocence must, if credited, "undermine the entire prosecution case and point unerringly to innocence or reduced culpability"); *Miller v. Comm'r of Corr.*, 700 A.2d 1108, 1130 (Conn. 1997) (actual innocence by clear and convincing evidence, plus insufficiency of evidence in combined record to support finding of guilt).

Because Carbajal has made a credible and comprehensive showing of his actual innocence and the court has adjudicated the claim on the merits, this Court should (1) grant review on the issue, (2) articulate the correct standard for determining a constitutional violation based on actual innocence, and (3) enter judgment that Carbajal's constitutional rights were violated because he is actually innocent of the attempted rape of Sylvia Carbajal.

## CONCLUSION

Petitioner respectfully requests that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

Date: 08/11/2021

