

SEP 14 2021

OFFICE OF THE CLERK

No. \_\_\_\_\_

21-6027IN THE  
SUPREME COURT OF THE UNITED STATESFIDEL ANGUIANO GALLARDO, — PETITIONER  
(Your Name)

vs.

SCOTT KERNAN, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Fidel Anguiano Gallardo, CDC#AU2566  
(Your Name)CTF P.O. BOX 705 (LB-313Up.)  
(Address)Soledad, CA 93960  
(City, State, Zip Code)N/A  
(Phone Number)**ORIGINAL**

## 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:

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "A-E" 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 is unpublished.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 "C-E" 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 is unpublished.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 is unpublished.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 is unpublished.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 JUNE 17, 2021 NO. 20-55430

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).

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, V:

NO PERSON SHALL BE HELD TO ANSWER FOR A CRIMINAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENMENTS OR INDICTMENT OF A GRAND JURY, EXCEPTS IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPLIED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF; NOR BE DEPRIVED OF LIFE, LIVERTY OR PROPERTY, WITHOUT DUE POROCESS OF LAW, NOR SHALL DEPRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

### U.S. CONSTITUTION, AMENDMENT VI:

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION, TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM OR HER, TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE AS GUARANTEED BY THE U.S. CONSTITUTION.

### U.S. CONSTITUTION, XIV: §1:

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES AND OR RESIDES IN THE UNITED STATES BOUNDARIES AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHERE THEY RESIDE; NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR INMUNITIES 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.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNDER THE 5th, 6th AND 14TH AMENDMENTS AS APPLIED TO A PETITIONS  
FOR WRIT OF HABEAS CORPUS FILED BY A LAY PETITIONER IN A FEDERAL  
28 U.S.C. § 2254

## QUESTION(S) PRESENTED

UNDER THE 5th; 6th and 14th Amendments and Due Process Clause as Guaranteed by the Federal Constitutional Guarantees as applied to Petitions for Writ of Habeas Corpus filed pursuant to 28 U.S.C., 2254, And the Subsequently Application to a Petition or Application Seeking a Certificate of Appealability (COA) 28 U.S.C. §2253:

- I. WHETHER, IS TIME FOR THIS HONORABLE U.S.S.C. TO PROVIDE GUIDANCE NATION WIDE BECAUSE THIS COURT HAS NOT YET MADE A CLEAR RULING REGARDING THE ADMISSION OF IRRELEVANT OR OVERLY PREJUDICIAL EVIDENCE OF PRIOR UNCHARGED SEXUAL OFFENSES IF SUCH ERROR CONSTITUTES A DUE PROCESS VIOLATION SUFFICIENT TO WARRANT FEDERAL HABEAS RELIEF.

Petitioner's Federal Petition was Denied and although the Ninth Circuit Court of Appeals Reopened the Case to consider whether to Issue a COA the Court denied relief because still this date this Honorable U.S.S.C. has expressly reserved this question of WHETHER USING EVIDENCE OF A DEFENDANT'S PAST CRIMES, EVEN TO SHOW HE HAS A PROPENSITY FOR CRIMINAL ACTIVITY, COULD EVER VIOLATE DUE PROCESS.

- I (A). WHETHER, CONSIDERATION OF UNCHARGED OFFENSES AS PROPENSITY EVIDENCE, CONSTITUTE A VIOLATION OF DUE PROCESS AND THE EQUAL PROTECTION WHICH RESULTED IN A MISCARRIAGE OF JUSTICE AND A DEPRIVATION OF A FAIR

- II. WHETHER, TRIAL COUNSEL'S FAILURE TO MOVE TO SUPPRESS ASSERTEDLY UNDULY SUGGESTIVE FIELD IDENTIFICATION, CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL

- III. WHETHER, THE DISTRICT COURT AND OR THE NINTH CIRCUIT COURT OF APPEALS FAILED TO HOLD AN EVIDENTIARY HEARING TO ALLOW THE APPOINTMENT OF AN ATTORNEY TO CHALLENGE THIS CONSTITUTIONAL REVERSIBLE ISSUES WHICH A LAY INMATE PROCEEDING IN PRO PER REPRESENTATION CAN CHALLENGE PROPERLY.

## STATEMENT OF THE CASE

In a first amended information filed January 22, 2014, appellant, Fidel Gallardo ("Gallardo") was charged with one count of forcible lewd act on a child. (§ 288, subd. (b)(1)), one count of first degree burglary (§ 459), one count of assault with intent to commit a felony (§ 220, subd. (a)) and one count of assault with intent to commit a felony during the commission of a burglary (§ 220, subd. (b)) (1 CT 93-96.) In connection with the forcible lewd act count, it was alleged that this offense was committed during the commission of a residential burglary with the intent to commit a sex crime within the meaning of section 667.61, subdivisions (a) and (d). (1 CT 96.) In connection with the burglary count, it was alleged that the offense is a violent felony because there was another person, other than an accomplice, present in the residence within the meaning of section 667.5, subdivision (c). (1 CT 94.)

Following a jury trial, Gallardo was convicted on all counts. (1 CT 154-156.) In addition, the jury found true the allegation that the forcible lewd act was committed during the commission of a residential burglary with the intent to commit a sex act within the meaning of Penal Code section 667.61, subdivisions

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

(a) and (d) and that another person was present in the residence at the time. (1 CT 154, 155.)

Prior to sentencing, Gallardo filed a new trial motion asserting that a juror had engaged in misconduct by interjecting her personal knowledge and expertise into the jury deliberations. (1 CT 234-239.) After a hearing (1 ART 3-5), the trial court denied the new trial motion. (1 CT 249; 1 ART 5-6.)

The trial court sentenced Gallardo to a term of 25 years to life under section 667.61, subdivisions (a) and (d) on the forcible lewd act count. On the burglary and assault counts, the court imposed but stayed those sentences under section 654. (8 RT 5103.) As a result, Gallardo received an aggregate sentence of 25 years to life. (1 CT 253; 8 RT 5103.) The lower court imposed a restitution fine of \$5,000.00 pursuant to Penal Code section 1202.4. (1 CT 254; 8 RT 5107.) Notice of appeal was timely filed on July 7, 2014. (1 CT 255.)

## **STATEMENT OF FACTS**

In September 2011, Maribel Vega ("Vega") was the mother of four children, including Trinidad G. ("Trinidad"), who was born in 2001 and was 10 years old in September 2011. (3 RT 1526-1527.) On September 30 and October 1, 2011, Vega lived with her children at 6740 Paramount Boulevard, Apartment E in Long Beach. (3 RT 1528.) Though he did not live there at the time, Jhony Larraga ("Larraga") stayed overnight with Vega and her children on the night of September 30-October 1. (3 RT 1528.)

Vega's apartment had two bedrooms, a bathroom, a kitchen and a living room. (3 RT 1528.) In the living room there were two windows, and the room was furnished with a long couch, a television and a small table. (3 RT 1529.) Vega's apartment was on the second floor. In addition to her apartment, there were two others on that level. (3 RT 1530.)

When Vega went to sleep on September 30, 2011, two of her children were asleep in the second bedroom. (3 RT 1535.) Vega's other two children, Trinidad and Juan, had fallen asleep on the L-shaped sofa in the living room with the television playing. (3 RT 1536.) The window near the sofa was closed; however, that window did not have a lock on it. (3 RT 1536.) The front door was locked when Vega went to bed. (3 RT 1537.)

On the night of September 30, 2011, Trinidad was wearing a white shirt, a pair of jeans and underwear. (3 RT 1896.) Trinidad was dressed in these clothes when she fell asleep on the couch after watching television with her brothers and sisters in the living room. (3 RT 1897-1899.)

At around 1:00 a.m., Trinidad was awakened by Gallardo, who was next to the couch. (3 RT 1899-1900, 1905, 1912-1913.) Gallardo was touching Trinidad at the waist with his hands, and he began to pull her pants down. (3 RT 1900-1901.) He also asked her if her parents were home. (3 RT 1900.) Trinidad yelled, and Gallardo covered her mouth. (3 RT 1902.) At one point, Trinidad tried to get up, but Gallardo pushed her down. (3 RT 1902-1903.) Trinidad told Gallardo that she wouldn't scream again, and Gallardo took his hand off her mouth. (3 RT

1902, 1904.) He then started pulling her pants down some more. (3 RT 1902.) Trinidad believed that Gallardo had pulled her pants down to her knees. (3 RT 1903.) Trinidad was afraid, and she yelled again. (3 RT 1902, 1904.)

Shortly after 1:00 a.m. on October 1, 2011, Vega was awakened by Trinidad screaming very loudly. (3 RT 1538.) Hearing this, Vega got up, opened her bedroom door and saw a man running from the couch and trying to open the front door. (3 RT 1539-1540.) Vega could only see the man from behind and noticed that he was wearing white socks, high top tennis shoes and shorts. (3 RT 1539.) Trinidad ran over to Vega with her pants down to her ankles and crying. (3 RT 1543; 3 RT 1906.) Vega ran out to try to see who the man was, but he had already exited the apartment. (3 RT 1545.) Vega then called 911. (3 RT 1545-1546.)

Outside of her apartment, underneath the window, Vega saw beer cans and cigarettes scattered about that she had not noticed before she had gone to sleep. (3 RT 1553-1554, 1556-1557.) Vega also saw that the curtain in the living room had been knocked down. (3 RT 1532-1533.) Approximately an hour after the incident, Vega identified Gallardo as the man she had seen in her apartment earlier that night. (3 RT 1557-1558, 1562-1563.)

Jhony Larraga ("Larraga") is Maribel Vega's husband. (2 RT 1251, 1253.) On the night of September 30-October 1, 2011, Larraga was staying in the second-floor apartment on Paramount Boulevard with Vega and her children, including Trinidad G. (2 RT 1253, 1257.) That night, he and Vega went to bed in their

bedroom and were sleeping when Larraga was awoken by a loud scream (2 RT 1260-1262.) Larraga got up, opened the bedroom door and looked into the living room. (2 RT 1263.) There, he noticed Gallardo running out the door, and Trinidad was screaming and shaking. (2 RT 1263, 1265, 1273-1274; 3 RT 1902.) The man Larraga saw was wearing a square-patterned shirt. (2 RT 1265.)

Larraga, who was naked, went back into the bedroom to put on his undershorts. (2 RT 1263, 1275.) When he came back out, he saw Gallardo go through the walkway toward the stairs, and then Gallardo ran down the stairs and out of the apartment complex. (2 RT 1263, 1266-1267.) Larraga followed Gallardo down the stairs but did not see where he had gone. (2 RT 1263-1264.) Neither Vega nor Larraga had given consent to Gallardo to be in the apartment that night. (2 RT 1267, 3 RT 1563.)

#### The Investigation

Jose Rodriguez ("Rodriguez") is an officer with the Long Beach Police Department. (4 RT 2167.) Rodriguez was on duty during the early morning hours of October 1, 2011, when he responded to a call at an apartment complex on Paramount Boulevard. (4 RT 2167-2168.) Upon arriving at the scene, Rodriguez circled the area looking for a suspect whose description had been sent over the radio. (4 RT 2168.) Specifically, Rodriguez was looking for a male Hispanic wearing a checkered shirt with a white shirt underneath. (4 RT 2169.)

Rodriguez began searching north of the apartment building and then went to 68<sup>th</sup> Street, which is the first street to the north. (4 RT 2171.) He turned east on

68<sup>th</sup> Street. (4 RT 2171.) He then located a potential suspect, later identified as Gallardo, walking near the intersection of Orizaba and 68<sup>th</sup> Street, which was about two blocks from the apartment complex where the incident had occurred. (4 RT 2171, 2173.) At the time, Gallardo was walking in a direction away from the Paramount Boulevard apartment complex. (4 RT 2171-2172.) Gallardo was wearing a checkered shirt with a white sleeveless undershirt beneath it. (4 RT 2172.)

Rodriguez shone his spotlight on Gallardo and called him over to the front of his patrol car. (4 RT 2172.) Gallardo stopped, looked eastbound down 68<sup>th</sup> Street, turned back toward Rodriguez and began to walk toward the police vehicle. (4 RT 2172.) Rodriguez detained Gallardo and brought him back to the Paramount Boulevard apartment complex for a field showup. (4 RT 2177.) Vega, Larraga and Trinidad each identified Gallardo as the man who had been in their apartment that night. (4 RT 2128-2129, 2131-2138.)

Louie Galvan ("Galvan") is a detective with the Long Beach Police Department assigned to the sex crimes unit. (3 RT 1802-1803.) Galvan was on duty on October 1, 2011 and was called to the Paramount Boulevard apartment shortly after 1:00 a.m. (3 RT 1804.) Galvan was assigned as the lead investigator in this case. (3 RT 1804.) In connection with that role, Galvan ordered the collection of certain biological evidence. (3 RT 1805.) Galvan took an oral reference swab from Trinidad. (3 RT 1806.) Another individual with the police department obtained swabs from Gallardo's hands. (3 RT 1810.)

Testing was performed on the palm swabs from each of Gallardo's hands to look for the presence of amylase. (3 RT 1844-1845.) Amylase is an enzyme that is found in bodily fluids and is found in higher concentration in saliva in order to break down starches in food. (3 RT 1842-1843.) According to the criminalist who conducted the amylase test, the results from the testing of the palm swabs showed an elevated level of amylase consistent with the presence of saliva. (3 RT 1852-1853.) The amylase test was consistent with a dilution of saliva of the ratio of 1 to 100. (3 RT 1853.)

In testing Gallardo's right palm swab for DNA, it was determined that Trinidad was a possible contributor to that sample, but that her DNA, if present, was at a very low level. (3 RT 1863-1865.) The odds of another person, unrelated to Trinidad, being a potential contributor of this DNA is 1 in 80. (3 RT 1866.) With respect to the left palm swab, Trinidad's alleles were found at more of the loci tested, which is a stronger result than for the right palm. (3 RT 1865-1866.) The odds of an unrelated person other than Trinidad contributing the DNA found on the left palm swab is one in 1.4 million in the general population. (3 RT 1866.)

Jack Manu ("Manu") is a Long Beach police officer. (4 RT 2201.) On October 1, 2011, Manu responded to a dispatch call to an apartment at 6740 Paramount Boulevard in Long Beach. (4 RT 2202.) Manu stayed outside the apartment unit to be available to provide any assistance that might be needed. (4 RT 2203.) As he stood outside the apartment door, Manu detected the smell of cigarette smoke and saw some discarded cigarette butts on the floor near the door.

(4 RT 2206.) He also saw some open beer cans next to the door. (4 RT 2207-2208.) Manu collected the beer cans and the cigarette butts as potential evidence. (4 RT 2208.) The cans were still cold to the touch and there was condensation on their exterior. (4 RT 2211.)

The beer cans found outside the apartment were tested for latent fingerprints; however, none were recovered. (3 RT 1513.) Swabs from the beer cans also were submitted for DNA testing. (4 RT 2110.) The DNA profiles from the two beer can swabs matched the profile from the reference sample provided by Gallardo. (4 RT 2112.) The random match probability that someone else would have the same DNA profile was calculated at one out of 10.1 quintillion. (4 RT 2113.)

DNA analysis also was performed on the cigarette butts. The profile on three of the cigarette butts matched Gallardo's DNA profile. (4 RT 2114.) On the fourth, a mixture of DNA was detected; however, the profile of the major contributor matched Gallardo. (4 RT 2115.)

#### Other Acts Evidence

Patricia E. is the sister of Priscilla S. (4 RT 2247-2248.) In 2009, Priscilla was living with her boyfriend, Miguel Anguiano ("Anguiano"), who is Gallardo's son, at 6758 Paramount Boulevard in Long Beach. (4 RT 2248-2250; 6 RT 3671.) On July 30, 2009, Patricia and her one-year-old daughter were living at the apartment with Priscilla and Anguiano. (4 RT 2249.) In addition, Gallardo was living there as well. (4 RT 2249-2250.) That night, Patricia was sleeping with her

daughter in the living room of the apartment. (4 RT 2250, 2413.) Patricia was on the floor, and her daughter was on the couch. (4 RT 2251, 2414.) Gallardo was also sleeping in the living room on another sofa (4 RT 2251, 2414.) Patricia went to sleep that night at around 11:30 p.m. (4 RT 2252.)

In the early morning hours, Patricia was awakened by Gallardo's lips pressed against hers. (4 RT 2252.) Gallardo also touched Patricia's upper thigh with his hand and moved it up and down over her clothing.<sup>2</sup> (4 RT 2253-2255.) As he did so, Gallardo said, "I'm sorry, my friend. I'm sorry. I'm sorry." (4 RT 2254.) In response, Patricia slapped Gallardo in the face. (4 RT 2255.) The two then began fighting over the phone. (4 RT 2255.) Patricia told Gallardo that she was going to call the police. (4 RT 2255.) Gallardo responded, "No, no, no. Please don't call the police, please don't call the police. I'm sorry, my friend. I'm sorry, I'm sorry." (4 RT 2255.) Gallardo pushed Patricia using his body weight as they struggled for the phone, and she threw things at him like shoes. (4 RT 2255-2256.)

Patricia also went to Priscilla and Anguiano and woke them up. (4 RT 2257.) Patricia told Priscilla and Anguiano what Gallardo had done and told Anguiano that Gallardo needed to leave. (4 RT 2257, 2415.) Eventually,

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<sup>2</sup> According to officers who interviewed Patricia on the night of the incident, she described two separate contacts by Gallardo. First, she stated that she woke up to find Gallardo rubbing her vagina over her clothes. (5 RT 2719; 7 RT 3966.) After she told Gallardo to stop and she went back to sleep, Patricia stated that she was awakened about an hour later by Gallardo kissing her and putting his tongue in her mouth. (5 RT 2720; 7 RT 3966.) Patricia also repeated this version of events in a later interview. (5 RT 2765.)

Gallardo left the apartment after speaking with Anguiano, and Patricia was able to call the police. (4 RT 2258, 2419.) According to Priscilla, Anguiano told Gallardo, "You messed up, you messed up and you got to go." (4 RT 2419.)

In 2008, when Priscilla's daughter was only a few months old, she and Anguiano lived in an apartment in Downey. (4 RT 2405.) Gallardo also lived with them at this apartment and slept on the couch. (4 RT 2405.) One day in September 2008, Priscilla dozed off in her room with the baby on her chest, as she tried to get the baby to sleep. (4 RT 2406.) She woke up to the feel of Gallardo touching her vaginal area, and she jumped up and almost dropped the baby. (4 RT 2407-2410.) At the time, Priscilla was wearing pajamas and the touch was over her clothes. (4 RT 2409.) Gallardo said, "I'm sorry, I'm sorry. I just wanted to talk." Priscilla said, "No. You need to get out, get out the room." (4 RT 2410.) Gallardo then left the room. (4 RT 2411.) Priscilla did not call the police because Anguiano told her not to do so. (4 RT 2411.)

#### Defense Evidence

Gallardo testified on his own behalf. On October 1, 2011, Gallardo was living in Lakewood at the residence of his sister. (6 RT 3670.) On September 30, 2011, Gallardo went to Anguiano's apartment at 6740 Paramount Boulevard because Anguiano had called him to say that they were going to go to work together the following day, and Gallardo was spending the night. (6 RT 3671-3673.) Gallardo arrived at Anguiano's apartment between 8:30 and 9:00 p.m. (6

RT 3672.) When Gallardo arrived, Anguiano was there as well as Gallardo's other son, Victor Lara ("Lara"). (6 RT 3673.)

Anguiano, Lara and Gallardo spent the evening drinking and talking. (6 RT 3683.) Occasionally, Gallardo would go outside to smoke a cigarette, and he would take a can of beer with him. (6 RT 3683.) After Anguiano went to bed, Gallardo continued drinking with Lara for about 20 minutes. (6 RT 3684.)

As Gallardo was getting ready to go to sleep, he noticed that his wallet and his cell phone were not in his pockets and that he had left them in his car. (6 RT 3685.) Gallardo left the apartment to get these items, and as he was walking down the walkway, he noticed that the door of the apartment next door (Apartment E) was open and sticking out. (6 RT 3685.) In order to get by, Gallardo closed the door, touching the exterior door knob. (6 RT 3685, 3687.)

Gallardo walked to his car, got his wallet and cell phone and then checked to see if he had any cigarettes. (6 RT 3687.) When he saw that he was out of cigarettes, Gallardo decided to go to the store to buy some. (6 RT 3687.) Gallardo began to walk toward 68<sup>th</sup> Street where there is an AM/PM market. (6 RT 3688.) As Gallardo was walking down 68<sup>th</sup> Street, he encountered a police officer who told him to stop. (6 RT 3689.) Gallardo was then handcuffed and taken back to the 6740 Paramount Boulevard apartment complex. (6 RT 3689.) Gallardo denied having any contact with Trinidad G. on September 30, 2011 or October 1, 2011. (7 RT 3957-3958.)

According to Gallardo, on the night of the Patricia incident, he, Patricia and Anguiano were drinking beer, and Patricia and Anguiano were also smoking marijuana. (6 RT 3674.) Gallardo went to sleep on the couch, and Patricia also laid down. (6 RT 3675.) He then asked her if she wanted to have sex with him. He asked her three times, and she refused him repeatedly. (6 RT 3675.) Gallardo then got up to get a beer from the refrigerator or to get something to eat. (6 RT 3675.) Patricia got up at the same time and they bumped into each other with Gallardo's mouth touching her cheek. (6 RT 3675.) Patricia became angry, asked why he had tried to kiss her and said that she was going to call the police. (6 RT 3675-3676.) Patricia then went to Anguiano's room to tell him and Priscilla what had happened. (6 RT 3676.) Anguiano suggested that Gallardo leave because Patricia was calling the police, so Gallardo left. (6 RT 3676.)

In describing the Priscilla incident, Gallardo stated that Priscilla was on her bed with her baby on her chest. (6 RT 3678.) The door was open, so Gallardo went in and asked Priscilla if she was still sleeping with his other son, Lara. (6 RT 3678.) Gallardo denied placing his hands on Priscilla. (6 RT 3678.) After Anguiano came home, he told Gallardo that Priscilla had asked that Gallardo not go into her bedroom. (6 RT 3679.)

Anguiano testified that Patricia merely stated that Gallardo had tried to kiss her during the incident at his apartment in 2009. (6 RT 3342.) She did not state that there had been any touching of her vagina or inner thigh, and she did not state that she wanted to press charges against Gallardo. (6 RT 3342, 3344.) In regard

to the incident involving Priscilla, she simply told Anguiano that Gallardo had come into her room while she was sleeping and scared her. (6 RT 3346.) Priscilla did not express any desire to call the police and merely informed Anguiano that she did not want Gallardo coming into her room when Anguiano was not there. (7 RT 3346.)

#### Rebuttal Evidence

Vega testified that, on the morning of October 1, 2011, as she was entering her apartment, Anguiano came over and said, "I'm so sorry for what happened. I'm so sorry for what my dad did. I'm so ashamed. I disown him now. I'm a Sureno, we don't deal with that shit. I'm moving out." (7 RT 3969, 3972-3973.) Anguiano also told Vega that the only reason Gallardo had been there was because they had to go to work the next day. (7 RT 3977.)

Detective Galvan testified that Gallardo had told the police that he had gone to get some food at Tom's Burgers on the night of the Trinidad G. incident. (7 RT 4254-4255.) Gallardo made no mention of buying a hot dog at the AM/PM store. (7 RT 4255.) Gallardo also did not say that he had left the apartment to get his wallet and cell phone or that he had closed the door to apartment E as he passed by it. (7 RT 4255-4256.)

## REASONS FOR GRANTING CERTIORARI

### I

CERTIORARI SHOULD BE GRANTED TO PROVIDE GUIDANCE NATION WIDE REGARDING THE ADMISSION OF PRIOR UNCHARGED SEXUAL OFFENSE TO SHOW PROPENSITY

IN THIS PARTICULAR AND EXTRAORDINARY PETITION SEEKING CERTIORARI PETITIONER BROUGHT AN IMPORTANT QUESTION OF LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT IS RAISED BY THE ISSUE/QUESTION OF WHETHER USING EVIDENCE OF DEFENDANT'S PAST UNCHARGED CRIMES, EVEN TO SHOW HE OR SHE HAS A PROPENSITY FOR CRIMINAL ACTIVITY, VIOLATES DUE PROCESS RIGHT TO FAIR TRIAL AND THE EQUAL PROTECTION AND OR IF THIS ERROR CONSTITUTE A MISCARRIAGE OF JUSTICE.?

THIS COURT HAS NOT YET SETTLED THIS ISSUE AND THE DISTRICT COURT REASON TO DENIED RELIEF IS BASED ON THE ABSENCE OF THIS COURT PRECEDENT THE DISTRICT COURT REASON DENYING RELIEF IS BECAUSE: "BECAUSE THE SUPREME COURT HAS LEFT THESE QUESTIONS UNANSWERED, THIS COURT CANNOT CONCLUDE THAT THE COURT OF APPEAL'S ADJUDICATION OF THE INSTANT CLAIMS WAS CONTRARY TO, OR AN UNREASONABLE APPLICATION OF "CLEARLY ESTABLISHED" FEDERAL LAW. THE DISTRICT COURT RELIED IN Larson-v-Palmateer, 515 F.3d at 1066; (Citing Estelle, 505 U.S. at 75 n.5) Id at the Magistrate Judge Jacqueline Chooljian REPORT AND RECOMMENDATIONS Pg.23:4-25, FN.10

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PETITIONER RESPECTFULLY CONTENDS AND SEEKS THE ISSUANCE OF CERTIORARI TO SETTLE THIS IMPORTANT QUESTION OF LAW BECAUSE NOT ONLY PETITIONER BUT THE STATE AND FEDERAL COURT'S AND LITIGANTS IN ALL STEPS ARE IN URGENT NEED OF GUIDANCE NATION WIDE BECAUSE IN ABSENCE OF SUCH AUTHORITY THE COURTS HAS NOT CHOICE BUT TO DENYIED RELIEF EVEN IN

A CLEAR VIOLATION OF A CONSTITUTIONAL GUARANTEES.BECAUSE GRANTING RELIEF IS SUCH CIRCUMSTANCES CONSTITUTE THE CREATION OF A NEW RULE Teague,489 U.S. 288, See Saffle-v-Parks,,494 U.S.484,487-88 (1990).

THIS COURT SHOULD SETTLE AND RESOLVE THE QUESTION RAISED IN THIS PETITION TO PROVIDE GUIDANCE NATION WIDE REGARDING THE ADMISSION OF UNCHARGED CRIMES. See Groen-v-Busby,886 F.Supp. 2d 1150, 1159 (C.D. Cal. 2012).

UNDER NINTH CIRCUIT PRECEDENT, THE ADMISSION OF EVIDENCE IN A STATE TRIAL OF PRIOR UNCHARGED CRIME VIOLATES DUE PROCESS See Jammal-v-Van de Kamp, 926 F.2d 918, 920 (1991);Windham-v-Merkle, 163 F.3d 1092, 1103-04 (9th Cir.1998)Cert.denied,541 U.S.950 (2004).

THE ISSUE IS RIPE FOR CERTIORARI, FOR THESE EXTRAORDINARY CIRCUMSTANCES PETITIONER'S PETITION FOR A WRIT OF CERTIORARY SHOULD BE GRANTED TO SETTLE AND TO MADE A CLEAR RULING NATION WIDE THAT THE ADMISSION OF IRRELEVANT OR OVERTLY PREJUDICIAL EVIDENCE OF PRIOR UNCHARGED CRIMES CONSTITUTES A DUE PROCESS VIOLATION SUFFICIENT TO WARRANT[FEDERAL HABEAS RELIEF].

FOR THESE REASONS AND IN THE INTEREST OF JUSTICE PETITIONER'S PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED AND ISSUED TO PROVIDE GUIDANCE NATION WIDE TO THE COURTS, PROSECUTORS, ATTORNEYS AND CRIMINAL DEFENDANTS, NATION WIDE.

CONCLUSION

The petition for a Writ of Certiorari Should be Granted.

Respectfully Submitted,

Fidel Anguiano Gallardo  
Fidel Anguiano Gallardo

Petitioner In Pro Per

DATE: MONDAY, SEPTEMBER 13, 2021