

No. 21-6949

FILED

OCT 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Reno Rios — PETITIONER
(Your Name)

VS.

warden-csp-corcoran — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 9th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Reno Rios E33173
(Your Name)

csp. corcoran
p.o. box - 3461
(Address)

Corcoran, CA. 93212
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER GILMAN V. BROWN 814 F.3d 1007 (9th Cir. 2016) CLASS ACTION PROPERLY RULED THE MERITS FOR THE 19% PERCENT OF NONE MURDER LIFER INMATES SERVING A LIFE SENTENCE WITH THE POSSIBILITY OF PAROLE IN THE STATE OF CALIFORNIA WITHIN EX POST FACTO PRINCIPLES. CAL. CONST. ART. I, SECTION 28; U.S. CONST. ART. I, SECTION 9, 10;

2. WHETHER THE CALIFORNIA PROPOSITION 9, THE VICTIMS BILL OF RIGHTS ACT OF 2008 ("MARCY'S LAW") ENACTED TO AMENDED CALIFORNIA PENAL CODE SECTION 3041.5 HAVE RETROACTIVELY INCREASED THE PUNISHMENT TO LIFER INMATES CONVICTED OF NONE MURDER OFFENCE BEFORE ITS ENACTMENT. WHEN THE PREVIOUS LAW MAXIMUM DENIAL FOR A BOARD OF PAROLE HEARING WAS TWO YEARS CAL. CONST. ART. I, SEC. 9; U.S. CONST. ART. I, SEC. 9, 10. BEAZELL V. OHIO, 269 U.S. 167 AT PP. 168-70, (1925); LYNCE V. MATHIS 519 U.S. 433 AT P. 441, (1997); SMITH V. DOE 538 U.S. 84 AT PP. 92-93 (2003). IN RE, LYNCH (1972) 8 CAL. 3d. 410. IN RE, BUTLER (2018) 4 CAL. 5th 728 AT P. 745. UNLESS "CLEAR AND CONVINCING" EVIDENCE ESTABLISHES THAT A SHORTER TERM FROM FIFTEEN (15) YEARS THROUGH THREE YEARS IS APPROPRIATE. CAL. PENAL CODE SECTION 3041.5 (b)(3)(A)

3. WHETHER THE UNITED STATES COURT PROPERLY DENIED ALL CLAIMS UNDER 28 U.S.C. SEC. 2254 AND 42 U.S.C. SECTION 1983 WITHOUT LEAVE TO AMEND TO CORRECT ANY DEFICIENCY WHICH COULD IT BE INTERPRETED IN A DIFFERENT WAY DUE TO THE COMPLEXITY OF THE ISSUES INVOLVED

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:

SEE APPENDIX-"B" U.S. DIST. CT. CIVIL
DOCKET FOR CASE #: 1:11-cv-00667-LJO-EPG
DOCKET #45 dated 10/16/2017 SECOND AMENDED
COMPLAINT FOR A COMPLETE REFERENCE TO
ALL PARTIES INVOLVED. SEE ALSO RIOS V.
WARDEN OF CSP-COICORAN 2018 U.S. DIST.
LEXIS 92258 FINDINGS & RECOMMENDATIONS.

RELATED CASES

GILMAN V. SCHWARZENEGGER 638 F.3d 1101 (9th
Cir. 2011). Gilman V. Brown 814 F.3d 1007,
(9th Cir. 2016). Nettles V. Grounds, No. 12-
16935, 2016 WL 4072465 (9th Cir. 2016) (en banc),
MUHAMMAD V. CLOSE, 540 U.S. 749, 750 (2004).
(per curiam), Gilman V. Brown 110 F. Supp. 3d
989, 1012 (E.D. Cal. 2014).
IN RE, LYNCH (1972) 8 Cal. 3d 410 [105 Cal. Rptr.
217] 503 P.2d 921.

CALIFORNIA DEPARTMENT OF CORRECTIONS V. MORALES
514 U.S. 499 at pp. 504-05 (1995).
Miller V. Florida 482 U.S. 423 at p. 432 (1987).
Lindsey V. State of Washington, 301 U.S. 397
at pp. 401-02 (1937). Weaver V. Graham
450 U.S. 24 at pp. 33-34 (1981).
Collins V. Youngblood, 497 U.S. 37 at p. 42 (1990)
(citing BEAZELL V. OHIO 269 U.S. 167 at pp. 168-70
(1925)). GARNER V. JONES 529 U.S. 244 (2000).
Taylor V. Sturgell 553 U.S. 880, 891 (2008)

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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 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at N/A; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the N/A 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 AUG. 16, 2021.

☒ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/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 N/A.
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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

42 U.S.C. Section 1983

28 U.S.C. Section 2254

CALIFORNIA CONSTITUTION ARTICLE I,
Section 9, 10, 17, 28;

U.S. CONSTITUTION 8th Amendment
CLAUSE 14th AMENDMENT

28 U.S.C. Section 1291.

28 U.S.C. Section 2253.

U.S. CONSTITUTION ARTICLE I, SEC. 9, 10.

28 U.S.C. Section 1331, 1343.

28 U.S.C. Section 2201, 2202, 1367.

28 U.S.C. Section 1391.

CALIFORNIA PENAL CODE SECTION 3041.5,
SECTION 3041,

CALIFORNIA CODE OF REGULATIONS
TITLE 15, SECTION 2281, 2282(C)
(DIVISION 2) BOARD OF PRISON HEARINGS

SENATE BILL 2516 (1990)

STATEMENT OF THE CASE

1. I RENO RIOS E33173 the petitioner in the instant case at bar is a state prisoner confined in the state of California serving a life sentence with the possibility of parole since 1989 for simple kidnapping without any serious or harmful damage or reckless disregard for the human being.

2. On October 27, 1989 petitioner was sentenced to serve a life sentence with the possibility of parole as defined California Penal Code Section 209(a) kidnapping. Nothing on the abstract of judgment indicated or reflected seven years to life nor a life sentence without the possibility of parole. See attached RENO RIOS Declaration page 1 of 6.

3. On October 27, 1989 petitioner was sentenced to serve his life sentence in accordance with California Penal Code Section 3041 and Section 3041.5 established on 1989 and until his final appeal of 1991. which mandated none murder offenses to be scheduled for the possibility to parole every year and not longer than two (2) years as established by California P.C. Section 3041, and Section 3041.5 (b)(2)(A).

4. Nothing on the abstract of judgment or sentencing hearing indicated that if in the future the law changed petitioner will endure a severe punishment which could increased his possibility to parole nor petitioner was aware prior he went to trial.

STATEMENT OF THE CASE

5. ON 1990, SENATE BILL 2516 PROVIDES:
"THE AMENDMENTS TO SECTION 3041.5 OF THE
PENAL CODE MADE BY THIS ACT SHALL BE APPLICABLE
ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1977,
OR ON AFTER JANUARY 1, 1991."

PRIOR TO AMENDMENT BY STATS. 1990, C. 1053,
THIS SECTION READ:

SUBDIVISION (6)(2) "WITHIN 20 DAYS FOLLOWING ANY
MEETING WHERE A PAROLE DATE HAS NOT BEEN SET FOR
THE REASONS STATED IN SUBDIVISION (6) OF SECTION
3041, THE BOARD SHALL SEND THE PRISONER A WRITTEN
STATEMENT SETTING FORTH THE REASON OR REASONS
FOR REFUSAL TO SET A PAROLE DATE AND SUGGEST
ACTIVITIES IN WHICH HE MIGHT PARTICIPATE THAT
WILL BENEFIT HIM WHILE HE IS INCARCERATED."

"THE BOARD SHALL HEAR EACH CASE ANNUALLY
THEREAFTER, EXCEPT THE BOARD MAY SCHEDULE
THE NEXT HEARING NO LATER THAN (A) TWO YEARS,
AFTER ANY HEARING AT WHICH PAROLE IS DENIED IF
THE BOARD FINDS THAT IT IS NOT REASONABLE TO
EXPECT THAT PAROLE WOULD BE GRANTED AT A
HEARING DURING THE FOLLOWING YEAR AND STATES
THE BASES FOR THE FINDING OR, (B),

"THREE YEARS AFTER ANY HEARING AT WHICH
PAROLE IS DENIED IF THE PRISONER HAS BEEN
CONVICTED, IN THE SAME OR DIFFERENT
PROCEEDINGS, OF MORE THAN ONE OFFENSE
WHICH INVOLVES THE TAKING OF A LIFE,
AND THE BOARD FINDS THAT IT IS NOT
REASONABLE TO EXPECT THAT PAROLE,
WOULD BE GRANTED AT A HEARING DURING
THE FOLLOWING YEARS AND STATES THE
BASES FOR THE FINDING."

STATEMENT OF THE CASE

6. Also on 1990 the California code of Regulations (CCR) Title 15 Section 2282(c) has been established the base term for kidnapping were the victim has suffered minor injury and for major injury from (15) fifteen years through (17) seventeen years were the victim suffered major injuries that required extensive treatment or the victim was seriously disabled. CCR, Tit. 15, Sec. 2282(c).

7. On May 12, 1989 petitioner was driving his Mustang at downtown Sacramento California with his two co-defendants while accidentally the victim was driving his black Firebird Pontiac on same street. Due to the victim had problems with his black Firebird gear he decided to park in the side of the street while petitioner two co-defendants recognized the three male Mexican nationals that were driving their black Firebird they order to petitioner to stop his Mustang because the victim whom was driving the black Firebird owed to petitioner co-defendants several thousand dollars from drugs he stole from co-defendants.

At the time of the offense petitioner was young he had no idea about the circumstances and he was afraid of retaliation if he did not stop his Mustang nor petitioner had any idea that his two co-defendants may kidnapped the victim. So petitioner decided to stop his Mustang due to the fact that the victim owed some money they stole from co-defendants and because petitioner thought that his two co-defendants only wanted to talk to the victim. At such time petitioner stated in his Mustang and his two co-defendants kidnapped the victim.

STATEMENT OF THE CASE

8. petitioner, asserted that his sole participation in the alleged kidnapping was due to the fact that he stopped his mustang while his two co-defendants kidnapped the victim.

9. on October 27, 1989 petitioner was convicted and sentenced solely on one count without the use of handgun or weapon in the alleged kidnapping nor the victim suffered any physical harm or injury because the sole purpose of the kidnapping was to have the victim paid money he owed from drugs.

10. on 1995 petitioner attended his first board of parole hearing (BPH) after he had served his minimum sentence in accordance with California pen. code section 3041.5. as it was established on 1990 for none murder offenses. At such time petitioner was denied two years at each board of parole hearing until October 01, 2008, the BPH refused to conduct petitioner's hearing because they alleged to be unavailable sufficient BPH commissioners to conduct hearings for which they postponed the hearing until the California legislation implemented the November 15, 2008, Marcy's Law under proposition 9, which took effect on January 2009.

see attached to this petition
petitioners RENO RIOS E33173 DECLARATION
with the attached exhibits - "A" - "F".

STATEMENT OF THE CASE

11. On February 10, 2009 petitioner was rescheduled to attend his Seventh BPH hearing and he was denied the opportunity to represent himself in propria persona due to the fact that all attorneys assigned by the BPH refused to object to the alleged facts established by the probation officer reports (POR) recommended to be part of petitioner's sentence at which not only have established the facts from the police reports instead those facts found by the jury trial and unlawfully recommended a life without the possibility of parole not applicable for kidnapping offenses which in return have subjected petitioner to a life sentence without the possibility of parole.

12. On April 28, 2009 petitioner was again scheduled to attend his subsequent 8th BPH hearing at which petitioner was denied ten (10) years based on the new provisions established on proposition 9, March's LW after petitioner been served (20) twenty years of his incarceration for his minimum participation in the alleged kidnapping based on repeatedly same commitment offense factors, the BPH have arbitrarily abused of its discretion when denied petitioner's ten (10) years on factors were previous BPH hearings denied two (2) years at each BPH hearing. Hence on March 12, 2019 petitioner was again attending his ten (10) years denial at BPH and he was denied five (5) years based on same unchanging commitment offense factors.

STATEMENT OF THE CASE

13. on April 27, 2011 petitioner submitted the instant petition in the United States District Court for the State of California as defined 28 U.S.C. Section 2254 following the state court denial. CASE No. 1:11-CV-00667-LJO

14. on June 07, 2011 the U.S. District Court for the Eastern District of California denied the petition for writ of habeas corpus and petitioner timely filed his notice of appeal and a certificate of appealability (COA) in the United States Court of Appeals for the 9th circuit CASE No. 11-16570

15. on August 10, 2011 the U.S. Court of Appeals for the 9th circuit granted a certificate of appealability (COA) on two grounds (1) whether proposition 9, Marcy's Law violated petitioner due process under ex post facto law. (2) and whether the Board of Prison Hearing (BPH) delay to conducted a BPH hearing subjected petitioner to the new Marcy's Law because on his previous hearing the most denial was two (2) years.

16. on November 02, 2011 the U.S. Court of Appeals for the 9th circuit granted the appointment of counsel. petitioner counsel requested an evidentiary hearing in regard to Gilman v. Brown 814 F.3d 1007 (9th Cir. 2016). Gilman v. Schwarzenegger, 638 F.3d 1101 (2011). on whether Gilman class, represented the 19% percent of none murder offenses.

STATEMENT OF THE CASE

17. On August 26, 2016 the United States of Appeal for the 9th Circuit entered its opinion on all cases involved challenges to Proposition 9, The Victims' Bill of Rights Act of 2008 ("MARCY'S LAW"). Cal. Const. Art. I Section 28. Cal. Penal Code Sections 679.026, 3041.5, 3043, 3044 by California prisoners serving indeterminate life sentences with the possibility of parole.

See CASE: 10-15412, 08/26/2016, ID: 10102002, Dktentry: 53-1. See CASE: 11-16570, FBI, the U.S. Court of Appeals for the 9th Cir.

18. The U.S. Court of Appeals for the 9th Circuit remanded each case that were challenging MARCY'S LAW in the wake of the Court opinion decided in *Gilman v. Brown*, 814 F.3d 1007 (9th Cir. 2016), and *Nettles v. Grounds*, No. 12-16935, 2016 WL 4072465 (9th Cir. 2016) (en banc).

The U.S. Court of Appeals for the 9th Circuit alleged that each case lacked jurisdiction to grant habeas relief 28 U.S.C. SEC. 2254, (*Nettles*, 2016 WL 4072465 at *10 indicating that "42 U.S.C. Section 1983 was the exclusive vehicle for claims brought by state prisoners that are not within the core of habeas corpus"). Each of the judgments were remand back to the U.S. District Court to afforded leave to amend their petitions to assert claims under 42 U.S.C. SEC. 1983. Also the 9th Circuit Court indicated that if any petitioner chooses to amend, the U.S. District Court should determine in the first instance the impact of *Gilman* on his claims. CASE: 10-15412, 08/26/2016 ID: 10102002 Dktentry: 53-1

STATEMENT OF THE CASE

19. on September 28, 2016 petitioner's counsel withdrew as counsel for petitioner as he was assigned only for the 9th Cir. Ct. of Appeals.

20. on February 13, 2017 petitioner filed his first amended complaint pursuant to 42 U.S.C. Section 1983 against the Board of Parole Hearing (BPH) under ex post facto violations and arbitrary retaliatory action for denying petitioner ten (10) years, based on sameunchanging factors considered by previous BPH hearings were petitioner was denied only 2-years at each hearing.

21. on October 16, 2017 petitioner filed his second amended complaint under 42 U.S.C. Sec. 1983 alleging that Gilman v. Brown class action did not represented petitioner's claims because Gilman's represented all murder offenses.

22. on June 01, 2018, the U.S. district court denied petitioner claims without leave to amend because the district court alleged that Gilman, class action represents all lifer inmates and that Marcy's Law did not violated petitioner's ex post facto claims because on Gilman's case the Board of Parole Hearing (BPH) allowed inmates to request a new hearing every three years if any extraordinary circumstances have changed from the previous hearing.

STATEMENT OF THE CASE

23. On July 23, 2021, the United States Court of Appeals for the 9th Circuit affirmed the district court judgment indicating that the district court properly dismissed petitioner's claims alleging that Marcy's law violates the ex post facto clause because this claim is foreclosed by the decision in *Gilman v. Brown* 814 F.3d 1007 (9th Cir. 2016). Also *Littlejohn v. United States* 321 F.3d 915, 920-23 (9th Cir. 2003) (setting forth standard of review and requirements for claims preclusion and issue preclusion).

Also the court of appeals indicated that the district court properly dismissed petitioner's due process and retaliation claims because he failed to allege sufficient facts to state a plausible claim for relief. per *Swarthout v. Cooke* 562 U.S. 216, 220 (2011) because in parole context, due process requires only that a prisoner be provided with an opportunity to be heard and statement of the reasons why parole was denied).
SEE No. 18-16647 memorandum

24. Petitioner have clearly explained to the U.S. District Court and Court of Appeals that *Gilman v. Brown* did not represent petitioner's claims because even if petitioner request advance hearing every three years under prior law the most denial was two years and the three years hearings was implemented solely for murder offenses none for none murder offenses. SEE CAL. PENAL CODE SECTION 3041.5(b)(2) OF 1990.

REASONS FOR GRANTING THE PETITION

A. petitioner's interest are not the same as 81% percent of those in Gilman class action. . . .

At all times during the pending case since 2011 none of the U.S. District Court nor the Court of Appeals nor the state of California courts ruled the instant case on the merit in regard whether none murder offenses imposition of 3-years deferral/15-years violated ex post facto principles as amended California Penal Code Section 3041.5(b)(2), created a significant risk of longer incarceration than under the former law in effect when the inmate committed his crimes.

Accordingly to the former Section 3041.5 subdivision (b)(2), before proposition 9, (marcy's law) was enacted, provided:

"THE BOARD SHALL HEAR EACH CASE ANNUALLY... EXCEPT THE BOARD MAY SCHEDULED THE NEXT HEARING NO LATER THAN THE FOLLOWING".

(A) TWO YEARS AFTER ANY HEARING AT WHICH PAROLE IS DENIED IF THE BOARD FINDS THAT THAT IT IS NOT REASONABLE TO EXPECT THAT PAROLE WOULD BE GRANTED AT A HEARING DURING THE FOLLOWING YEAR AND STATES THE BASES FOR THE FINDING.

(B) UP TO FIVE YEARS AFTER ANY HEARING AT WHICH PAROLE IS DENIED IF THE PRISONER HAS BEEN CONVICTED OF MURDER, - and the board finds that is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding

REASONS FOR GRANTING THE PETITION

In the early 1980, penal Code Section 3041.5, mandated that a life prisoner receive annual parole consideration hearing once he reached parole eligibility. See *In re Vicks* at p. 492. The statute later was amended to give the Board discretion to defer a parole hearing for two years (for all life sentence prisoners) or three years (for life sentence inmates convicted of multiple murder) if the Board found it was not reasonable to expect that parole would be granted sooner than two or three years, respectively. *Ibid.*

On October 27, 1989 petitioner was sentenced solely on one count penal Code Section 209(a) kidnapping and sentenced to serve a life sentence with the possibility of parole. California Code of Regulations (CCR) Title 15, Section 2282(c) describes the base term established by the Board of Parole Hearing for kidnapping. On 1995, petitioner was scheduled to attend his initial Board of Parole Hearing after serving his minimum sentence he was entitled to attend every hearing once a year or two years and allowed to have a new hearing with different BPH member due to the fact that the board cannot relied on unchanging commitment offense factors considered by previous BPH's. See *In re Lawrence*, (2008) 44 Cal. 4th 1181, 1191, 82 Cal. Rptr. 3d 169, 190 p. 3d 535, 539.

In 1994, the statute was again amended to allow the BPH deny parole a maximum of five years if the prisoner had been convicted of murder and the Board found that it was not reasonable to expect he would be granted parole sooner than five years. If the inmate had not been convicted of murder.

REASONS FOR GRANTING THE PETITION

ON NOVEMBER 15, 2008 THE LEGISLATION ENACTED PROPOSITION 9, TO AMENDED ARTICLE I, SECTION 28 OF THE CALIFORNIA CONSTITUTION AND CALIFORNIA PENAL CODE SECTION 3041.5.

THE NEW LAW MADE DRAMATIC STRUCTURAL CHANGES TO PAROLE HEARING PROCEDURES, INCLUDING BOTH THE ELIMINATION OF DISCRETION TO DENY PAROLE ANY FEWER THAN THREE YEARS AND THE EXPANSION OF DISCRETION TO DENY PAROLE A MAXIMUM OF FIFTEEN YEARS. ADDITIONALLY, THE "DEFAULT" TERM OF DENIAL WAS TRIPLED FROM ONE TO THREE YEARS. IN SUMMARY, PROPOSITION 9 CHANGED TERMS OF PAROLE DENIAL AS FOLLOWS:

- THE MINIMUM TERM THAT PAROLE MAY BE DENIED WAS INCREASED FROM 1 YEAR TO 3 YEARS;
- THE MAXIMUM TERM THAT PAROLE MAY BE DENIED FOR INMATES CONVICTED OF NON-MURDER OFFENSES WAS INCREASED FROM 2 YEARS TO 15 YEARS;
- THE "DEFAULT" PERIOD OF PAROLE DENIAL WAS INCREASED FROM 1 YEAR TO 15 YEARS;
- THE BOARD'S DISCRETION TO SET THE DEFERRAL PERIOD BASED ON CASE-SPECIFIC FACTORS ANY LOWER THAN 3 YEARS WAS ELIMINATED;
- THE BURDEN OF PROOF FOR ESTABLISHING PAROLE SUITABILITY WAS MADE MORE ONEROUS. UNDER THE PRIOR LAW, THE BOARD COULD DENY PAROLE ONE YEAR UNLESS IT WAS NOT REASONABLE TO EXPECT THAT PAROLE WOULD BE GRANTED AT A HEARING DURING THE FOLLOWING YEAR. NOW THE BOARD MUST DENY 15 YEARS UNLESS "CLEAR AND CONVINCING" EVIDENCE ESTABLISHES THAT THE PRISONER WILL BE SUITABLE FOR PAROLE IN LESS THAN 15 (FIFTEEN) YEARS.

REASONS FOR GRANTING THE PETITION

on October 01, 2008 petitioner was scheduled to attend his Board hearing under the old law prior implementing Marcy's law and it was postponed by the Board due to unavailable BPH panel members as a result petitioner was subjected to Marcy's law enacted on November 15, 2008 proposition 9,

on February 10, 2009 petitioner was again scheduled to attend his Seventh Subsequent Board of Parole hearing (BPH) and the BPH denied petitioner to represent himself as he objected to the BPH reliance on unchanging factors at his Seventh hearing due to the fact that the BPH constantly relied on the Probation Officer recommendations (POR) submitted at his sentence which relied on factors from the police reports not found by jury to be true plus because the POR calls on its recommendations to sentence petitioner to a life sentence without the possibility to parole. As a result of petitioner objections the BPH did not allow petitioner to represent himself because none of the assigned attorneys wanted to object to the POR recommendations.

on April 28, 2009 petitioner was again rescheduled to attend his Seventh Subsequent BPH under Marcy's law and subjected to retaliation for objecting against the POR factors not found by the jury to be true the BPH denied petitioner ten (10) years based on same unchanging factors were he was denied 2-years under previous law.

REASONS FOR GRANTING THE PETITION

on March 12, 2019 petitioner was again rescheduled to attend his eight subsequent BPH and again was denied FIVE YEARS based on SAME UNCHANGING FACTORS. Also the BPH have recommended petitioner to participate on selfhelp programs to complete victim awareness. Denial/management, because petitioner denied the factors established by the probation officer reports also it was recommended to complete the criminal gang ANONYMOUS AND NARCOTIC ANONYMOUS because petitioner admitted his association with prison gangs even known that petitioner never was affiliated with any gangs outside of prison nor his offense was gang related nor any narcotics or drugs were involved on his commitment offense however the BPH denied petitioner FIVE (5) YEARS based on MARY'S LAW proposition 9.

GILMAN, CLASS ACTION did not represented the interest of NONE MURDER OFFENSES because MARY'S LAW was enacted against murder offenses AND GILMAN, CLASS ACTION represented only MURDER OFFENSES due to in 1988, CALIFORNIA VOTERS passed prop. 89 which amended the CALIFORNIA CONSTITUTION ART. V, SECTION 8, which GRANTS the GOVERNOR the authority to AFFIRM, MODIFY, or REVERSE decisions of the BOARD with respect to inmates convicted of "MURDER". SEE GILMAN, AT *1010. petitioner AND NONE MURDER OFFENSES CLASS did not required to be reviewed by the GOVERNOR, because NONE MURDER OFFENSES are subjected to EN BANC review by BOARD OF PAROLE MEMBERS/COMMISSIONERS.

REASONS FOR GRANTING THE PETITION

BECAUSE ON GILMAN, CLASS REPRESENTED 81% PERCENT OF MURDER OFFENSES, THE PETITION TO ADVANCE (PTA) A NEW HEARING ALLOWED THEM TO SETTING FORTH THE CHANGES IN CIRCUMSTANCES OR NEW INFORMATION THAT ESTABLISHES A REASONABLE LIKELIHOOD THAT CONSIDERATION OF THE PUBLIC SAFETY DOES NOT REQUIRED ADDITIONAL PERIOD OF INCARCERATION OF THE INMATE, DID NOT VIOLATED EX POST FACTO PRINCIPLES BECAUSE UNDER THE OLD LAW MURDER OFFENSES WERE ENTITLED TO REQUEST A NEW HEARING IF THEY WERE DENIED FIVE YEARS BASED ON SAME PTA REQUIREMENTS. CAL. P.C. SECTION 3041.5 (b)(1).

NONE MURDER OFFENSES WERE NOT ENTITLED TO REQUEST A NEW HEARING THROUGHOUT ANY PTA... BECAUSE UNDER THE OLD LAW THE BOARD CANNOT DENIED THEM BEYOND THE TWO (2) YEARS... EVEN IF NONE MURDER OFFENSES REQUEST A PTA FOR A NEW HEARING UNDER PROP. 9, (MARCY'S LAW) THEY STILL HAVE TO WAIT ONE YEAR EXTRA FROM PREVIOUS LAW, EVERY TIME THEY REQUEST ONE.

MARCY'S LAW PROP. 9, NOT ONLY VIOLATED EX POST FACTO LAW TO NONE MURDER OFFENSES, BUT ALSO HAVE UNCONSTITUTIONALLY EXTENDED THEIR SENTENCE UNDER 8TH AMENDMENT UNUSUAL PUNISHMENT OR CRUEL BY STATUTE BEYOND THE BASE TERM ESTABLISHED UNDER THE BOARD POLICY AS DEFINED CAL. CODE OF REGS. 711.15, SEC. 2282(c) AS RULED IN RE, BUTTER (2018) 4 CAL. 5TH 728. THE COURT HELD AN INDETERMINATE TERM NOT TO BE HELD FOR A PERIOD GROSSLY DISPROPORTIONATE TO HIS OR HER INDIVIDUAL CULPABILITY. ID. AT *745. SEE ALSO IN RE, LYNCH (1972) 8 CAL. 3D 410. THE TEXT AS CRUEL OR UNUSUAL PUNISHMENT WAS WHETHER THE PUNISHMENT EXCEEDED THE CONSTITUTIONAL LIMIT REGARDLESS A LESSER TERM HAVE BEEN FIXED IN PARTICULAR CASE.

REASONS FOR GRANTING THE PETITION

ON MARCH 26, 2012, petitioner counsel has been adduced extraordinary evidence in opposition to warden of CSP-Corcoran to motion for summary affirmance that was located on the internet through a Google search which has been published by the Stanford Criminal Justice Center titled, "LIFE IN LIMBO: AN EXAMINATION OF PAROLE RELEASE FOR PRISONERS SERVING LIFE SENTENCES WITH THE POSSIBILITY OF PAROLE IN CALIFORNIA". At which indicated that 96% percent of inmates serving term-to-life sentences with possibility of parole were convicted of murder, attempted murder, rape or other sexual crimes and only 4% were convicted of kidnapping.

HOWEVER NONE OF THESE FACTORS WERE ADDRESSED BY THE GILMAN CLASS, NOR BY THE U.S. COURT OF APPEALS FOR THE 9TH CIRCUIT AS ALL FACTORS WERE REMANDED TO THE U.S. DIST. CT. IN REGARD WHETHER MARCY'S LAW PROP. 9 VIOLATED THE EX POST FACTO AS DEFINED 42 U.S.C. SECTION 1983. SEE AUGUST 26, 2016 9TH CIR. COURT ON REMAND CASE: 10-15412 ID: 10102002, Dktentry: 53-1 (RIOS V. WARDEN). ALSO BONSTAD V. HARTLEY 668 FED. APPX. 696 (9TH CIR. 2016) AT *697 ORDER.

ACCORDING TO THE 2011 STUDY PUBLISHED BY THE STANFORD CRIMINAL JUSTICE CENTER OF STANFORD LAW SCHOOL, ONLY 4% PERCENT OF ALL INMATES CONFINED FOR KIDNAPPING. 81% PERCENT WERE CONVICTED FOR MURDER. 10% PERCENT WERE CONVICTED OF ATTEMPTED MURDER, AND 6% PERCENT WERE CONVICTED OF RAPE AND OTHER OFFENSES. NONE OF THESE FACTORS WERE ADDRESSED BY THE U.S. DIST. CT. NOR BY THE COURT OF APPEALS, SPECIFICALLY BECAUSE 19% PERCENT WERE ENTITLED TO BE DENIED NOT LONGER THAN TWO (2) YEARS UNDER PREVIOUS LAW.

REASONS FOR GRANTING THE PETITION

B. EX POST FACTO PRINCIPLES

THE EX POST FACTO CLAUSE PROHIBITS NEW THAT "MAKE MORE BURDENSOME THE PUNISHMENT FOR A CRIME AFTER ITS COMMISSION." *Beazell v. Ohio*, U.S. 167 at pp. 168-70 (1925). TO FALL WITHIN THE EX POST FACTO PROHIBITION, THE LAW "MUST BE RETROSPECTIVE - THAT IS, 'IT MUST APPLY TO EVENTS OCCURRING BEFORE ITS ENACTMENT' - AND IT 'MUST DISADVANTAGE THE OFFENDER AFFECTED BY IT' [CITATION] BY ALTERING THE DEFINITION OF CRIMINAL CONDUCT OR INCREASING THE PUNISHMENT FOR THE CRIME." *Lynce v. Mathis* 519 U.S. 433 at p. 441 (1997).

A LAW ENACTED WITH PUNITIVE INTENT MAY VIOLATE EX POST FACTO PRINCIPLES. *Smith v. Doe*, 538 U.S. 84, at pp. 92-93 (2003). ("IF THE INTENTION OF THE LEGISLATURE WAS TO IMPOSE PUNISHMENT THAT ENDS THE INQUIRY... THE COURTS MUST FIRST ASK WHETHER THE LEGISLATURE, IN ESTABLISHING THE PENALIZING MECHANISM, INDICATED EITHER EXPRESSLY OR IMPLIEDLY A PREFERENCE FOR ONE LABEL OR THE OTHER.") (SEE ALSO *Russell v. Gregoire*, 124 F.3d 1079 at pp. 1085-87 (9th Cir. 1997)).

C. THE AMENDMENTS ARE RETROSPECTIVE TO PETITIONERS NONE MURDER OFFENSE

A LAW IS RETROSPECTIVE IF IT INCREASES THE PUNISHMENT FOR A CRIMINAL ACT AFTER THE ACT HAS OCCURRED. *CALIFORNIA DEPARTMENT OF CORRECTIONS v. MORALES*, 514 U.S. 499 at pp. 504-05 (1995). CHANGES IN PAROLE STANDARDS, PRACTICES OR POLICIES THAT APPLY TO CASES IN WHICH THE COMMITMENT OFFENSE OCCURRED BEFORE THE CHANGES WERE PASSED ARE RETROSPECTIVE. *Id.*; SEE ALSO *GARNER v. JONES*, 529 U.S. 244 (2000).

REASONS FOR GRANTING THE PETITION

D. THE NEW AMENDMENTS CREATE A SIGNIFICANT RISK OF PROLONGED INCARCERATION

Under the new law, the minimum deferral period (3-years) is now longer than the maximum deferral period possible (2-years) under the old law for inmates convicted of non-murder offenses. The minimum length of parole denial jumped from one year to three years, while the maximum deferral period skyrocketed from two years to fifteen years for non-murder offenses, accompanied by a drastic increase in the presumptive denial term, or "default" deferral period of one year under the prior law to fifteen years.

During the fifteen years petitioner could attend seven Board of Parole Hearings (BPH) with different BPH Commissioners that could if conducted different views at each hearing due to the fact that the Board could not rely on same unchanging factors from previous hearings. (See *In re Lawrence* (2008) 44 Cal. 4th 1181, 1191, 82 Cal. Rptr. 3d 169.

Even if non-murder offenses petition to advance (PTA) a new hearing every three years the risk still existed beyond the two years established under the old law. None of this factors were addressed in Gilman class because Gilman was representing murder offenses.

Section 2 of the Victims Rights Act of 2008 (Marcy's law) prop. 9, set forth "Findings and declarations" which explains the objective to punish murderers due to Marcy's killer also Section 3 of prop. 9, is a "statement of purposes and intent". For murders hearings from 3-15 years.

REASONS FOR GRANTING THE PETITION

- E. PETITIONERS CLAIMS COULD NOT BE CONSIDERED AS SUCCESSIVE DUE TO GILMAN CLASS DID NOT REPRESENT NONE MURDER OFFENSES

ON AUGUST 26, 2016 THE U.S. CT. OF APPEALS FOR THE 9TH CIRCUIT REMAND THE CASE BACK TO THE DISTRICT COURT BECAUSE THERE WAS NO JURISDICTION UNDER HABEAS CORPUS BECAUSE PETITIONER DO NOT CHALLENGED THE "VALIDITY OF ANY CONFINEMENT... THE PARTICULAR AFFECTING ITS DURATION." AND HAVE CITED MUHAMMAD V. CLASE, 540 U.S. 749, 750 (2004) (PER CURIAM), THE COURT OF APPEALS VACATED THE CLAIMS AND REMANDED THE PETITION TO THE DISTRICT COURT TO LEAVE TO AMEND THE PETITION UNDER 42 U.S.C. SECTION 1983. CASE: 10-15412 ID: 10102002, DKTENTRY: 53-1, SEE ALSO BORSTAD V. HARTLEY 668 FED. APPX. 696 AT P. *697 ORDER.

THE COURT OF APPEALS INDICATED IF PETITIONERS CHOOSES TO AMEND, THE DISTRICT COURT SHOULD DETERMINE IN THE FIRST INSTANCE THE IMPACT OF GILMAN ON HIS CLAIMS.

BECAUSE GILMAN CLASS, DID NOT REPRESENT NONE MURDER OFFENSES THE U.S. DISTRICT AND COURT OF APPEALS FAILED TO DENIED, THIS CLAIMS UNDER SUCCESSIVE CLAIMS PERCLUSION DUE TO THE FACT THAT THE CLAIMS WERE NEVER RULED ON THE MERIT FOR NONE MURDER OFFENSES. RIOS V. WARDEN 2018 U.S. DIST. LEXIS 92258

NOR THE DISTRICT COURT OR COURT OF APPEALS CONSIDERED PETITIONER CLAIMS UNDER CRUEL UNUSUAL PUNISHMENT BY APPLYING MARYS LAWS TO PETITIONER AFTER TWO DECADES OF INCARCERATION FOR SIMPLE KIDNAPPING SEE IN RE, PALMER (2019) 33 CAL. APP. 5TH 1199. IN RE LYNCH (1972) 8 CAL.3D. 410.

CONCLUSION

petitioner asserts that this court should GRANT the instant action under 28 U.S.C. SECTION 2254 pursuant 8th Amendment as a result of over of 30 years of incarceration solely on one count simple kidnapping as cruel/unusual punishment as a result of ex post facto Marcy's Law due to petitioner presented 9 grounds to the district court under 28 U.S.C. Sec. 2254.

proposition 9, enacted a host of punitive changes, substantially increasing parole denial terms, including the minimum and maximum denial terms possible, tripling the "default" parole denial term and abolishing the Board's discretion to grant parole hearings any sooner than once in three years, thereby eliminating the Board's ability to tailor hearings to the prisoners particular circumstances. These onerous changes violate ex post facto principles as applied to appellant. Moreover, the provision in proposition 9, permitting advanced hearings does nothing to ameliorate ex post facto concerns, and the punitive intent of the law is clear.

The United States District Court and Court of Appeals erred by judging petitioners' claims under Gilman class and claims preclusion without allowing petitioner to amend his complaint under 42 U.S.C. SECTION 1983 ex post facto violations for none murder offense and cruel/unusual excessive punishment as grossly disproportionate sentence while enforcing Marcy's Law.

Alternatively, this court should remand to the district court for further proceedings independent of the Gilman class action.

DATED: October 19, 2021

Respectfully Submitted
René Ruiz
René Rios in prose