

No. 21-7798

ORIGINAL

Supreme Court, U.S.
FILED

APR 28 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

FRANCISCO MANUEL PADILLA — PETITIONER
(Your Name)

vs.

T. ALLEN, SVSP WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT, STATE OF CALIFORNIA

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

PETITION FOR WRIT OF CERTIORARI

FRANCISCO MANUEL PADILLA

(Your Name)

SALINAS VALLEY STATE PRISON, P.O. BOX 1050

(Address)

SOLEDAD CALIFORNIA 93960

(City, State, Zip Code)

N/A

(Phone Number)

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QUESTION(S) PRESENTED

1. DID THE TRIAL COURT ABUSE ITS DISCRETION, AND THEREBY VIOLATE APPELLANT'S CONSTITUTIONAL RIGHTS WHEN IT DENIED HIS MOTION TO WITHDRAW HIS PLEAS?
2. DID THE TRIAL COURT ABUSE ITS DISCRETION, AND THEREBY VIOLATE APPELLANT'S CONSTITUTIONAL RIGHTS, WHEN IT DENIED HIS *MARSDEN*¹ MOTION FOR NEW APPOINTED COUNSEL?

¹ PEOPLE *VS.* MARSDEN (1970) 2 CAL.3d 118.

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:

STATE OF CALIFORNIA ATTORNEY GENERAL

RELATED CASES

(TOLLET VS. HENDERSON (1973) 411 U.S. 238, 267, 93 S. CT. 1602, 1608.)
(ACCORD, UNITED STATES VS. HERNANDEZ (9TH CIR. 2000) 203 F. 3d 614, 618 - 619.)
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(ACCORD, PEOPLE VS. LAMB (1999) 76 CAL. APP. 4TH 664, 674, 90 CAL. RPTR. 2d 565, 571.)
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(ACCORD, PEOPLE VS. SANDOVAL (2006) 140 CAL. APP. 4TH 111, 123, 43 CAL. RPTR. 3d 911, 914.)
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(UNITED STATES VS. SWINNEY (8TH CIR. 1992) 970 F. 2d 494, 499.)
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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 _____ 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☐ is unpublished.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.

☒ 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,
☒ 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 _____.

☐ 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 3/16/2022.
A copy of that decision appears at Appendix A.

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

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STATEMENT OF THE CASE

APPELLANT FRANCISCO PADILLA AND CO-DEFENDANTS ROLANDO MAGANA AND EDGAR PICAZO WERE CHARGED WITH VIOLATIONS OF PENAL CODE SECTION 187, SUBDIVISION (a), FIRST DEGREE MURDER (COUNT 1), PENAL CODE SECTION 664/187, SUBDIVISION (a), ATTEMPTED MURDER (COUNTS 2, 3, 4, 5), PENAL CODE SECTION 246, SHOOTING AT AN INHABITED DWELLING (COUNT 6), PENAL CODE SECTION 664/211, ATTEMPTED HOME INVASION ROBBERY (COUNT 7), PENAL CODE SECTION 245, SUBDIVISION (b), ASSAULT WITH A SEMIAUTOMATIC FIREARM (COUNT 8), AND PENAL CODE SECTION 459, FIRST DEGREE BURGLARY (COUNT 9). SPECIAL CIRCUMSTANCES WERE ALLEGED AS TO COUNT 1. (SEC. 190.2, SUBD. (a) (17).) FIREARM (SECS. 12022.53, SUBDS. (c), (d), (e)) AND GANG ENHANCEMENTS (SEC. 186.22, SUBD. (b)) WERE ALLEGED. IT WAS ALLEGED THAT MAGANA PERSONALLY INFLICTED GREAT BODILY INJURY. (SEC. 12022.7, SUBD. (a).) IT WAS ALLEGED THAT APPELLANT HAD ONE STRIKE (SECS. 1170.12, SUBD. (a) - (d), 667, SUBD. (b) - (i)) AND ONE SERIOUS FELONY (SEC. 667, SUBD. (a)). (1CT 220-244.) APPELLANT ENTERED A PLEA OF NOT GUILTY. 1CT 245.)²

ON AUGUST 22, 2018, THE DAY TRIAL WAS TO BEGIN, THE PARTIES AGREED UPON A DISPOSITION. THE DEFENDANTS THEREAFTER WAIVED THEIR RIGHTS AND ENTERED PLEAS OF NO CONTEST TO THE MURDER AND ATTEMPTED MURDER CHARGES (COUNTS 1, 2, 3, 4, 5) AND ADMITTED FIREARM (SEC. 12022.53, SUBDS. (d), (e)(1)) AND GANG (SEC. 186.22, SUBDS. (b)(1), (5) ENHANCEMENTS. A FACTUAL BASIS -- THE POLICE REPORTS AND PRELIMINARY EXAMINATION -- WAS AGREED TO. THE INDICATED SENTENCE FOR ALL DEFENDANTS WAS 25 YEARS-TO-LIFE. (2CT 323; 2RT 10-44.) AS TO APPELLANT, THE STRIKE AND SERIOUS PRIOR FELONY ALLEGATIONS WERE STRICKEN. (2CT 238; 2RT 30-31.)³

ON NOVEMBER 28, 2018, APPELLANT SENT A HANDWRITTEN LETTER TO THE TRIAL COURT REQUESTING A *MARSDEN* HEARING FOR NEW COUNSEL AND A HEARING REGARDING WITHDRAWAL OF HIS PLEAS. (2CT 339-340.) ON MAY 1, 2019, APPELLANT FILED A *MARSDEN* MOTION (2CT 344-348) AND A MOTION TO WITHDRAW HIS PLEAS. (2CT 349-351.) ON MAY 14, 2019, AFTER A HEARING, THE MOTIONS WERE DENIED. (2CT 358; 3A RT 52-62.)

² "CT" REFERS TO THE CLERK'S TRANSCRIPT. "RT" REFERS TO THE REPORTER'S TRANSCRIPT.

³ APPELLANT ALSO ENTERED A PLEA OF NO CONTEST IN ANOTHER CASE INVOLVING A CHARGE OF VIOLATING PENAL CODE SECTION 4502, SUBDIVISION (a) CUSTODIAL POSSESSION OF A WEAPON. (2RT 37.) HE RECEIVED A PRISON TERM OF 2 YEARS, CONCURRENT WITH THE INSTANT CASE. (2CT 354-255/360; 30 RT 67.)

STATEMENT OF THE CASE

ON MAY 14, 2019, IN CONFORMITY WITH THE PLEA AGREEMENT, APPELLANT WAS SENTENCED TO 25 YEARS-TO-LIFE ON COUNT 1. CONCURRENT SENTENCES OF 7 YEARS TO LIFE WERE IMPOSED ON COUNTS 2, 3, 4, AND 5. THE FIREARM ENHANCEMENTS WERE STAYED. AS TO ALL COUNTS, PURSUANT TO SECTION 186.22, SUBDIVISION (b)(5), A MINIMUM PAROLE ELIGIBILITY TERM OF 15 YEARS WAS IMPOSED.

ON JUNE 17, 2019, APPELLANT, ON HIS OWN, FILED A NOTICE OF APPEAL. (2CT 393 -394.)

ON DECEMBER 10, 2019, PURSUANT TO THIS COURT'S ORDER (SUP. CT 4) AND APPELLANT'S REQUEST (SUP. CT 6-14), THE TRIAL COURT GRANTED APPELLANT'S REQUEST FOR A CERTIFICATE OF PROBABLE CAUSE. (SUP. CT 12, 15.)

ON JANUARY 6, 2022, THE COURT OF APPEAL AFFIRMED THE JUDGMENT. ON MARCH 16, 2022, THE CALIFORNIA SUPREME COURT DENTED PETITION FOR REVIEW.

STATEMENT OF THE FACTS

THE PROBATION REPORT PROVIDES A "BRIEF SUMMARY" OF THE ALLEGED FACTS:

ON MAY 27, 2014, MAGANA, PADILLA, PICAZO AND V.D. BROKE INTO THE VICTIM'S RESIDENCE. DURING THE HOME INVASION VICTIM J.R. SHOT AND KILLED V.D. AND ENGAGED IN GUN FIRE WITH MAGANA. MAGANA SHOT J.R. MULTIPLE TIMES, WHILE VICTIMS N.R., E.R. AND M.R. HID DURING THE INCIDENT AND REMAINED UNHARMED. (2CT 365.)⁴

⁴

THE PROBATION REPORT (2CT 363 -368) AND PRELIMINARY EXAMINATION (1CT 72 -114) PROVIDE A MORE DETAILED ACCOUNT OF THE ALLEGED FACTS.

REASONS FOR GRANTING THE PETITION

A. DENIAL OF MOTION TO WITHDRAW PLEAS

A DEFENDANT'S GUILTY OR NO CONTEST PLEA MUST BE "TRULY VOLUNTARY." (MC CARTHY VS. UNITED STATES (1969) 394 U.S. 459, 465, 89 S. CT. 1166, 1170.) THE PLEA MUST BE "VOLUNTARY AND KNOWING." (Id.) THE PLEA MUST BE "MADE VOLUNTARILY WITH UNDERSTANDING OF THE NATURE OF THE CHARGE AND THE CONSEQUENCES OF THE PLEA." (SANTOBELLO VS. NEW YORK (1971) 404 U.S. 257, 261, FN. 1, 92 S. CT. 498, FN. 1.) HERE, APPELLANT'S PLEAS CONTAINED NONE OF THESE CONSTITUTIONALLY REQUIRED ELEMENTS, YET THE COURT OF APPEAL FOUND NO ABUSE OF DISCRETION IN THE DENIAL OF APPELLANT'S MOTION TO WITHDRAW HIS PLEAS AND THE CALIFORNIA SUPREME COURT DENIED PETITION FOR REVIEW. IN SO RULING, BOTH COURTS PERPETUATED THE ERROR. THE TRIAL COURT ERRED AND THUS VIOLATED THE MYRIAD FUNDAMENTAL RIGHTS ACCORDED A DEFENDANT IN A CRIMINAL CASE BY THE UNITED STATES OF AMERICA CONSTITUTION FIFTH, SIXTH AND FOURTEENTH AMENDMENTS AND THEIR CALIFORNIA COUNTERPARTS.

APPELLANT STATED GOOD CAUSE FOR WITHDRAWAL OF HIS GUILTY PLEAS

WHEN APPELLANT ENTERED HIS PLEA, HE DID SO WITHOUT HAVING REVIEWED ALL OF THE DISCOVERY IN THE CASE. NOT BEING APPRISED OF ALL THE EVIDENCE AGAINST HIM, APPELLANT COULD NOT PROPERLY AND ADEQUATELY CONSIDER THE OPTIONS OPEN TO HIM. BY NOT INFORMING APPELLANT OF ALL THE EVIDENCE AGAINST HIM, I.E., BY WITHHOLDING DISCOVERY, DEFENSE COUNSEL "BREACHED HIS DUTY TO EXPLAIN A MATTER TO THE EXTENT REASONABLY NECESSARY TO PERMIT THE CLIENT TO MAKE INFORMED DECISIONS..." DAVIS VS. GREINER (2ND CIR. 2005) 428 F. 3d 81, 88.) APPELLANT THUS ESTABLISHED "A FAIR AND JUST REASON FOR WITHDRAWING THE PLEA." (UNITED STATES VS. NEGRON - NARVAEZ (1ST CIR. 2005) 403 F. 3d 33, 36.)

APPELLANT'S SECOND GROUND FOR WITHDRAWING HIS PLEA WAS THE ASSERTION THAT HE HAD AN ALIBI FOR THE NIGHT OF THE INCIDENT, I.E., THAT HE WAS AT MR. MARTINEZ'S HOUSE. THUS, APPELLANT WAS ASSERTING HIS INNOCENCE OF THE CHARGED OFFENSE. IT CANNOT BE GAINSAYED THAT "[B]EING LEGALLY INNOCENT OF A CRIME... IS A FAIR AND JUST REASON TO WITHDRAW A GUILTY PLEA." (UNITED STATES VS. RINALDI (7TH CIR. 2006) 461 F. 3d 922, 927; ACCORD, UNITED STATES VS. HODGES (7TH CIR. 2001) 259 F. 3d 655, 661; UNITED STATES VS. GROLL (7TH CIR. 1993) 992 F. 2d 755, 758; UNITED STATES VS. CHAVERS (7TH CIR. 2002) 515 F. 3d 722, 725 ["ACTUAL INNOCENCE IS A VALID GROUND FOR WITHDRAWING A GUILTY PLEA."]) COURTS SHOULD BE "LIBERAL IN ALLOWING THE PLEA TO BE WITHDRAWN, ESPECIALLY WHERE THERE IS DOUBT OF DEFENDANT'S GUILT." (PEOPLE VS. BUTLER (1945) 70 CAL. APP. 2d 553, 561, 161 P. 2d 401, 405.)

A "'VALID CLAIM OF INNOCENCE'" (UNITED STATES VS. JONES (D.C. CIR. 2100) 642 F. 3d 1151, 1156) IS A PROPER REASON FOR PERMITTING WITHDRAWAL OF A PLEA. SUCH A CLAIM REQUIRES THE DEFENDANT TO "'AFFIRMATIVELY ADVANCE AN OBJECTIVELY REASONABLE ARGUMENT THAT HE IS INNOCENT.'" (UNITED STATES VS. JONES, SUPRA, 642 F. 3d at 1158.) HERE, APPELLANT PROVIDED SUCH AN ARGUMENT -- "DURING THE TIME OF THE INCIDENT, I WAS IN HIS [MR. MARTINEZ'S] HOUSE." IF APPELLANT WAS AT MARTINEZ'S, HE IS INNOCENT OF THE CHARGES. THE MOTION TO WITHDRAW THE PLEAS SHOULD HAVE BEEN GRANTED.

REASONS FOR GRANTING THE PETITION

THE ALLEGEDLY "OVERWHELMING" EVIDENCE AGAINST APPELLANT, THE "UNPROVOKED" ATTACK, AND THE SUPPOSED "BENEFICIAL" NATURE OF THE PLEA AGREEMENT (3A RT 59-61) ARE NOT JUSTIFIABLE REASONS TO DENY A MOTION TO WITHDRAW A PLEA WHERE, AS HERE, THE DEFENDANT CLAIMS HE WAS NOT PRESENT, HAS AN ALIBI WITNESS, AND WAS DENIED DISCOVERY. IF THE ALIBI IS PROVEN, THE DEFENDANT IS INNOCENT. THE EVIDENCE IS NO LONGER OVERWHELMING AND THE PLEA IS NOT BENEFICIAL. APPELLANT'S CLAIM OF AN ALIBI NEGATES THE TRIAL COURT'S STATED REASONS FOR DENYING THE PLEA WITHDRAWAL MOTION.

BY DENYING THE MOTION TO WITHDRAW THE PLEAS, THE TRIAL COURT APPARENTLY REJECTED APPELLANT'S CLAIM OF INNOCENCE. BUT, THERE IS NO EVIDENCE THAT APPELLANT'S ALIBI WAS FALSE. THE TRIAL COURT DID NOT STATE THAT IT DISBELIEVED APPELLANT. AND, APPELLANT'S COUNSEL MERELY STATED THAT "WE WEREN'T ABLE TO FLESH OUT ANY OF THE INFORMATION ABOUT THE ALIBI WITNESS." (3A RT 57.) IN SUCH A CASE, WHERE CONFLICTING INFERENCES CAN BE DRAWN, A TRIAL COURT SHOULD HOLD AN EVIDENTIARY HEARING INTO THE MATTER. AS STATED IN (UNITED STATES VS. GROLL, SUPRA, 99 F.2d 24758; ACCORD, NORTH CAROLINA VS. ALFORD (1970) 400 U.S. 25, 38, FN. 10, 91 S. CT. 160, 168, FN. 10 ["PLEAS COUPLED WITH CLAIMS OF INNOCENCE SHOULD NOT BE ACCEPTED... UNTIL THE JUDGE TAKING THE PLEA HAS INQUIRED INTO AND SOUGHT TO RESOLVE THE CONFLICT BETWEEN THE WAIVER OF TRIAL AND THE CLAIM OF INNOCENCE."]) IF THIS COURT HAS ANY DOUBT REGARDING THE ISSUE, IT SHOULD REMAND FOR AN EVIDENTIARY HEARING ON APPELLANT'S CLAIM OF INNOCENCE.

CONCLUSION

IN PEOPLE VS. MC GARVY (1943) 61 CAL. APP. 2d 577, 564, 142 P. 2d 92, 95-96, THE COURT MADE AN OBSERVATION THAT IS ESPECIALLY APT IN THE INSTANT CASE, (ACCORD, PEOPLE VS. YOUNG (1956) 138 CAL. APP. 2d 425, 427, 291 P. 2d 980.)

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION TO WITHDRAW HIS PLEAS. AS STATED IN MCGARVY, IF APPELLANT IS INNOCENT, "HE OUGHT TO HAVE A FAIR OPPORTUNITY FOR A DEFENSE." HE WAS UNFAIRLY DENIED THAT OPPORTUNITY. GRANTING THIS PETITION IS REQUIRED.

B. THE TRIAL COURT ERRONEOUSLY DENIED APPELLANT'S MARSDEN MOTION

A MARSDEN MOTION FOR THE APPOINTMENT OF NEW COUNSEL "SHOULD BE GRANTED IF THE DEFENDANT AND COUNSEL HAVE AN UNRECONCILABLE CONFLICT SO THAT INEFFECTIVE REPRESENTATION IS LIKELY TO OCCUR." (PEOPLE VS. LOYA (2016) 1 CAL. APP. 5TH 932, 945, 205 CAL. RPTR. 3d 231, 241.)

HERE, WHEN THE FACTS SURROUNDING APPELLANT'S MOTION FOR NEW COUNSEL ARE VIEWED OBJECTIVELY, IT IS CLEAR THAT APPELLANT SATISFIED THE CONDITIONS FOR APPOINTMENT OF A DIFFERENT ATTORNEY. THE TRIAL COURT, HOWEVER, DENIED THE MOTION. THE COURT OF APPEAL FOUND NO ERROR AND THE CALIFORNIA SUPREME COURT DENIED PETITION FOR REVIEW. EACH COURT WERE WRONG. APPOINTMENT OF NEW COUNSEL SHOULD HAVE BEEN GRANTED.

REASONS FOR GRANTING THE PETITION

APPELLANT ESTABLISHED INADEQUATE REPRESENTATION AND IRRECONCILABLE CONFLICT

APPELLANT STATED:

- * MY LAWYER DOES NOT ADHERE TO ANY REQUESTS THAT I HAVE MADE WHICH I BELIEVE ARE MY CONSTITUTIONAL RIGHTS.
- * AFTER FOUR YEARS I HAVE YET TO SEE MY FULL DISCOVERY.
- * I HAD A KEY WITNESS FOR MY ALIBI.
- * I WANT AN EXPERT, AN IDENTITY EXPERT.
- * AFTER THE PLEA, THAT WAS LIKE THE LAST THING WE TALKED ABOUT. I DIDN'T EVEN - WE DIDN'T TALK AFTER THAT. LIKE - LIKE YOU SENT YOUR INVESTIGATOR A COUPLE OF TIMES, BUT THAT WAS IT. HE WASN'T REALLY TRYING TO HEAR ME OUT. HE WAS JUST LIKE OH, NO, IT COST TOO MUCH TO DO THIS OR DO THAT.
- * MY LAWYER HAS NEVER PROVIDED ME WITH ANY TYPE OF DISCOVERY OR TAKEN THE TIME TO GET WITH ME AND EXAMINE EVIDENCE OR TALK ABOUT DEFENSE AFTER ADVISING ME WE WOULD DO SO ON (3) THREE OCCASIONS; WITH NEGATIVE RESULTS.
- * MY LAWYER HAS NOT TOUCHED BASIS WITH ME ABOUT "S.B 1437" AFTER REQUESTS ON MY PART WHICH I BELIEVE MY/OUR CASE FALLS UNDER.
- * ACCORDING TO THE JUDGE OUR PLEA "DEAL" WAS (25) YEARS TO (LIFE). NOTHING LESS. NOTHING MORE. NOW THE D.A IS ATTEMPTING TO INTERFERE AND NOT STRIKE MY STRIKE AS AGREED AND TACK ON AN ADDITIONAL (5) YEARS TO SAID SENTENCE WHICH VIOLATES THE PLEA BARGAIN I AND OTHERS HAVE AGREED TO. I FEEL LIKE I'M BEING DECEIVED.
- * I DO NOT FEEL COMFORTABLE WITH TAKING THE CURRENT "DEAL" PRESENTED BY THIS COURT NOR HAVE I EVER FELT COMFORTABLE DOING SO.
- * EVEN THE SECURITY OFFICERS, THEY DON'T EVEN POSITIVELY IDENTIFY ME AS THE PERSON CARRYING WHATEVER THEY SAY.
- * THE CAMERA'S DISTORTED. I SEEN THE PICTURE WHEN THE DETECTIVES CAME TO ME, BUT IT IS NOT ME.

APPELLANT [HAS] ESTABLISHED " CONSTITUTIONALLY INADEQUATE REPRESENTATION. "

CONCLUSION

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S *MARSDEN* MOTION. AS A RESULT, APPELLANT WAS DENIED HIS RIGHTS TO DUE PROCESS, TO A FAIR

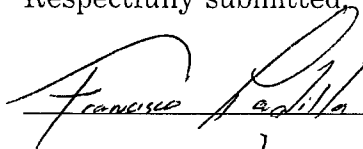
PROCEEDING , TO EFFECTIVE ASSISTANCE OF COUNSEL , TO COUNSEL OF HIS CHOICE , TO PRESENT A DEFENSE , AND TO FUNDAMENTAL FAIRNESS UNDER THE UNITED STATES OF AMERICA CONSTITUTION FIFTH , SIXTH , AND FOURTEENTH AMENDMENTS AND THE STATE OF CALIFORNIA CONSTITUTION , ARTICLE 1 , SECTION 15 . THUS , GRANTING THIS PETITION IS REQUIRED .

CONCLUSION

FOR REASONS STATED ABOVE , GRANTING IS REQUIRED .

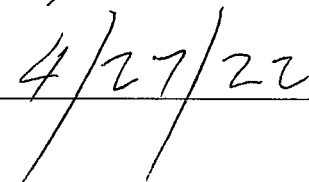
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Francisco Padilla

Date:



4/27/22