

22-6113

No. _____

Supreme Court, U.S.
FILED

OCT 14 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Guillermo Garcia — PETITIONER
(Your Name)

vs.

JAMES HILL (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Guillermo Garcia (In Pro-Se)
(Your Name)

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(City, State, Zip Code)

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ORIGINAL

(i)

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:

TABLE OF AUTHORITIES CITED

CASES 1. Mayle v. Felix, 545 U.S. 644 (2005) PAGE NUMBER 3.

2. Rose v. Williams No. 16-16533 (D.C. No. 2:14-CV-01527 JCM-PAL) 9th Cir. Dated: 02-24-2020 6.

STATUTES AND RULES

1. 28 U.S.C. § 2244(d)(1)(A) statute of limitations Page 3
2. Federal Rules of Civil Procedure, Rule 13(c)(1)(B)
3. Federal Rules of Civ. Proc. Rule 10(c)
4. Federal Rules of Civ. Proc. and rules governing section § 2254, cases in the U.S. District courts (The habeas Rules) (see Fed. R. of Civ. Proc. 81(a)(4); Habeas rule 12.

QUESTION(S) PRESENTED

1. WHETHER THE LOWER COURT MADE A LEGAL ERROR WHEN DENYING HIS APPEAL, WHEN HIS MIX PETITION SHARE CORE OF OPERATIVE FACTS IN COMMON WITH THOSE IN HIS ORIGINAL PETITION RELATING BACK TO ORIGINAL PETITION AND SHOULD NOT BEEN DISMISSED.
2. WHETHER THE U.S. DISTRICT COURT MADE A LEGAL ERROR WHEN IT DINIED PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL, AND HIS MOTION TO APPEAL TO THE UNITED STATES COURT COURT OF APPEALS.

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APPENDIX B	U.S. District Court Central District
APPENDIX C	Supreme Court of California
APPENDIX D	Court of Appeal For The State of California
APPENDIX E	Superior Court for the State of California
APPENDIX F	UNITED STATES DISTRICT COURT CIVIL DOCKET FOR CASE # : 2:05-cv-07439-JHN-OP
APPENDIX G	CIVIL MINUTES ORDERS BY U.S. DISTRICT COURT JUDGE Oswald Perada.

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 C 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 of Appeal State court appears at Appendix D 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 July 25, 2022.

☒ 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 12-30-2020.
A copy of that decision appears at Appendix C.

☐ 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

1. 28 U.S.C. § 2244(d)(1)(A) Statute of limitations
2. Federal Rules of Civil Procedure, Rule 15(c)(1)(B).
3. Federal Rules of Civ. Proc. Rule 10(c)
4. Federal Rules of Civil Procedure and Rules Governing Section 2254 Cases in the U.S. district courts (The "Habeas Rules") (See Fed. R. Civ. Proc. 81(a)(4); Habeas rule 12
5. *Mayle v. Felix*, 545 U.S. 644 (2005).

STATEMENT OF THE CASE

On 10-18-2005, petitioner filed a "Mix Petition" For Writ of Habeas Corpus in Pro-Se. Using a court-provided form for habeas corpus by the U.S. District Court. He asserted 15 Grounds, Garcia "petitioner" also attached an order from the California Supreme affirming the denial of his state petition for post-conviction relief. (see Appendix F, case 2:05-cv-07439-JHN-OP). Garcia also requested appointment of counsel. (see DKT. #4), at page 2 of 14).

On 11-28-2005, Garcia filed another Motion for appointment of counsel DKT. #12. at page #3. On 12-20-0. Garcia filed an appeal for the denial of his Motion for appointment of counsel (see DKT #11 Appx F). On 12-21-2005, Judge Victor B. Kenton denied petitioner Garcia's appeal for appointment of counsel. (the document was received but not filed DKT #11).

On 12-20-2005, Judge V. B. Kenton denied Garcia's Appeal for appointment of counsel, but did not forward it to the U.S. Court of Appeals (see APPX. F at page #4 of 14 DKT. #13), and didn't file it.

On 12-15, 2005, Garcia filed a motion to attend the law library as a "Preferred Legal Status" (PLS), because he was always in lockdown at Pleasant Valley State Prison, with no access to the Institution law library. (Appx F at p. #4 of 14 DKT. #16).

On 07-06-2006, after several request for extension of time Respondent filed Motion to Dismiss (see DKT. #41 at p. #7 of 14).

Over →
p. # 5

On January 08, 2007, Judge Oswald Parada denied Garcia's request for appointment of counsel dkt. # 52. Respondents alleged petitioner failed to exhaust his Habeas Petition in the state courts.

However, at the Report and Recommendation (R/R) Garcia showed the California Supreme Court order where he exhausted his Habeas Corpus of Grounds 1-15. (See Appx. F at pages 8 of 14 DKTS. # 50-52). Judge Oswald Parada denied Respondents Motion to dismiss and order Respondent to "file answer in accordance with court's October 24, 2005, Order dkt # 52.

On 08-05-2008, Garcia filed a motion to Amend just like on his last declaration on record he stated he wanted appointment of counsel because he did not know how to "Amend his Writ of Habeas Corpus. (See APPX. F at page 10 of 14, DKTS: # 69-72).

Garcia's Writ of Habeas Corpus was denied without Judge Oswald Parada granting petitioner's Motion For Appointment of counsel in order to Amend his Habeas Corpus grounds: 1-15 (See Appx. 6-1, 6-2 and 6-3).

REASONS FOR GRANTING THE PETITION

1. An amended petition might relate back to an original petition even if the original petition "provide(s) factual support at the time it was filed in the U.S. District court."
2. THE COURT MADE AN ERROR WHEN IT DENIED PETITIONER'S MOTION TO APPOINT COUNSEL TO HELP GARCIA TO AMEND HIS PETITION (SEE ROSS V. WILLIAMS NO. 16-16533) (D.C. NO. 2:14-cv-01527 JCM-PAL) Court of Appeals for the Ninth Cir.).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Smilla Parin In Pro-Se

Date: October 13, 2022