No. 23-680

In the Supreme Court of the United States

IN RE FRANDER SALGUERO, *PETITIONER*

On Petition for an Extraordinary Writ to the District Attorney of Los Angeles County, George Gascón and deputy District Attorney Steven Mac; Through the Fifth Division of the Second District Court of Appeal of California

PETITION FOR AN EXTRAORDINARY WRIT MANDAMUS AND OR PROHIBITION

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QUESTION PRESENTED

This Court has jurisdiction over the filed and pending certiorari petitions *Salguero v. California,* No. 23-610, (*Brady* issue) & *Salguero v. Court of Appeal of California, Second Appellate District, et al.,* No. 23-609 (*Napue* issue) (hereafter *Salguero v. Court of Appeal*). It is well established that this Court renders decisions on the facts and issues of the particular case before it. With both of the *Salguero* matters involving a known false record, distinguishing "facts" from their antonym "perjury" becomes crucial. This raises the question: How can the Court make fundamental constitutional law, guiding countless courts and affecting the rights of millions, without knowing what to rely on?

According to the U.S. Constitution, Article III vests the judicial power in one Supreme Court, extending to all cases, both in Law and Equity, arising under the Constitution, with appellate jurisdiction in both Law and Fact. The use of false evidence is a usurpation of the core judicial power in this country.

This mandamus petition does not merely aid this Court's appellate jurisdiction; it seeks to restore Article III to its rightful owner.

The question presented is:

Whether mandamus should compel the prosecutor to fulfill his constitutional duty and correct the known false record.

PARTIES TO THE PROCEEDING

Petitioner in this Court and in the lower courts, —except as defendant at the trial court— is Frander Salguero, a human being, currently confined in a California state prison after jury trial.

Respondents in this Court are the current District Attorney of Los Angeles County, California, the Honorable, George Gascón, in his official capacity; and the prosecutor from said jury trial, deputy District Attorney Steven Mac, in his official capacity; and the California Court of Appeal, Second District, Fifth Division, as an entity, not as individual justices, *Ex Parte Fahey*, 332 U.S. 258, 259-60 (1947); *Mallard v. United States District Court*, 490 U.S. 296, 309-10 (1989).

The real party in interest listed in the state courts was the People of the State of California, represented by the Attorney General of California.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to the case in this Court within the meaning of Rule 14.1(b)(iii), all in California:

- *People v. Salguero*, No. MA066642, Superior Court of Los Angeles County. Judgment entered Oct. 12, 2016.
- *People v. Salguero*, No. B278249, Second District Court of Appeal, Division Five. Judgment entered May 31, 2018.
- *People v. Salguero*, No. S249843, California Supreme Court. Review denied Aug. 29, 2018.
- *Salguero v. Sullivan*, No. CV 19-07414-CJC (AS) U.S. District Court for the Central District of California. Judgment entered June 10, 2020.

- *People v. Salguero*, No. MA066642, Superior Court of Los Angeles County. Order of denial entered Sept. 15, 2022.
- *Salguero v. Superior Court* (I), No. B323872, Second District Court of Appeal, Division Five. Order denying as moot entered Nov. 4, 2022.
- *People v. Salguero*, No. MA066642, Superior Court of Los Angeles County. Order granting in part and denying in part entered Nov. 18, 2022.
- *Salguero v. Superior Court* (II), No. B325061, Second District Court of Appeal, Division Five. Order denying mandamus entered Jan. 20, 2023.
- *Salguero v. District Attorney* (III), No. B325333, Second District Court of Appeal, Division Five. Order denying mandamus entered Feb. 24, 2023.
- *Salguero v. Superior Court* (IV), No. S278394, California Supreme Court. Order denying review entered Apr. 12, 2023)
- *People v. Salguero* (V), No. B328253 Second District Court of Appeal, Division a. Order dismissing appeal entered Jun. 14, 2023.
- *Salguero v. District Court of Appeal* (VI), No. S278944, California Supreme Court. Order denying extraordinary writ entered Jul. 19, 2023.
- *People v. Salguero* (VII), No. S281123 California Supreme Court. Order denying review entered Aug. 30, 2023.
- *Salguero v. Court of Appeal of California, Second Appellate District, et al.,* No. 23-609 United States Supreme Court. Petition for certiorari filed in conjunction herewith.
- *Salguero v. California,* No. 23-610 United States Supreme Court. Petition for certiorari filed in conjunction herewith.

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Appendix G

ARTICLES OF PARTICULAR IMPEACHMENT

TABLE OF AUTHORITIES

Cases

California Code Civil Procedure

California Evidence Code

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California Rules of Court

Other Resources

Relevant Opinions Below

No decisions in this case are published. The first three are orders denying relief in original proceedings, forth is order denying federal habeas, last was on direct review:

PETITION FOR A WRIT OF MANDAMUS

Frander Salguero respectfully petitions for an extraordinary writ of mandamus and or prohibition[1] to the California Court of Appeal Second District Division Five, restraining noncompliance with this Court and compelling the District Attorney of Los Angeles County to correct the false record in *People v. Salguero* Nos. MA066642 and B278249.

JURISDICTION

The California Supreme Court denied the extraordinary petition seeking mandatory relief under the Fourteenth Amendment in *Salguero v. District Court of Appeal* (VI), S278944 on July 19, 2023, ("final on filing" Cal. Rules of Court, rule 8.532 (b)(2)(C) App.135a). A petition for certiorari was timely filed in that matter, *Salguero v. Court of Appeal of California* No. 23-609. This mandamus will serve the Court's appellate authority.

Jurisdiction is invoked by 28 U.S.C. §§1651(a); 2201(a); 2202; U.S. Const. Art. III.

Choosing this road "sparingly exercised" (Rule 20.1), by petitioning for mandamus before this Court —serving not just one, but all—demonstrates the sole competent remedy to compel the duty to correct known false evidence, exemplifying the principle of leading by example.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

—Robert Frost,
The Road Not Taken

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[1] Collectively will be referred to as mandamus.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III in petition at 5 and 39
Article VI in petition 39
Amendment I in petition at 40
Amendment VI in petition at 7
Amendment IX in petition at 35
Amendment XIV

SECTION. 1. ...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.

United States Code

28 U.S.C. § 1331 in petition at 38
28 U.S.C. § 1443 in petition at 38
28 U.S.C. § 1651 (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1861 in petition at 37
28 U.S.C. § 1872 in petition at 37
28 U.S.C. § 2072 in petition at 38
28 U.S.C. § 2106 in petition at 40

28 U.S.C. § 2201 (a) In a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2202 Further necessary or proper relief based on a declaratory judgment or decree may be

granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S.C. § 2248 in petition at 25

28 U.S.C. § 2254 (f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein... If the applicant, because of indigency or other reason is unable to produce such part of the record, then *the State shall produce such part of the record* and the Federal court shall direct the State to do so by order directed to an appropriate State official. *If the State cannot provide such pertinent part of the record*, then the court **shall determine under the existing facts** and circumstances what weight shall be given to the State court's factual determination.

California Codes

Civil Procedure

Code Civ. Proc. § 1090 in petition at 37

Evidence

Evid. Code, § 413 in appendix 156a

Penal

Pen. Code, § 29.2 in petition at 18
Pen. Code, §§ 132, 134 in appendix 107a-108a
Pen. Code, § 141 in appendix 108a
Pen. Code, § 1054.1 in part at 12, full at 115a
Pen. Code, § 1096 in part at 33, full at 117a
Pen. Code, § 1473 in part at 20, full at 122
Pen. Code, §§ 11165.12, 11167, 11167.5, 11169 at 129a-132a

INTRODUCTION

FOR WANT OF A MEANS OF DELIVERANCE

Ask any American if they are comfortable with the government using known perjury to send them or their loved ones to prison for life—100% of the answers will be, "No."

Followed-up with: Are you aware there is no established swift process in our country to rectify convictions based on proven perjury, to ensure a speedy release? There would only be disbelief.

> It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.
>
> *In re Winship*, 397 U.S. 358, 364 (1970)

JURISDICTIONAL FACT

The nucleus of the atomic structure of judicial power is solely comprised of facts. Facts attract and hold in orbit equity, law, and remedy. Introducing the false appearance of facts causally creates a void. That instability forces a division; the result is devastating.

Without stating the correct facts, this Court cannot even hear this cause. Article III announces specific instances that this Court's jurisdiction extends to, it is only through facts that any litigant may present those criteria to invoke this Court's power. Lying to this Court to satisfy the appearance of jurisdiction simply does not grant it because it was written.

The entirety of law is fundamentally dependent on facts. To prove perjury, one needs facts. Without facts, there is no subject matter jurisdiction.

FACTS RELEVANT TO ARTICLE III

These six circuits that have held perjury is permissible are acting in excess of their jurisdiction; worse still they are causing a fundamental deprivation of this Court's right to exist.

U.S. Const. art. III, § 1 ("The judicial Power of the United States, shall be vested in one supreme Court,") § 2 cl.1 ("The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,") cl.2 ("In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact"). Jurisdiction twice iterated Fact, i.e., "both", "and".

Therefore, when an uncorrected false record appears before this Court with sufficient proof—with the greatest of deference and deep respect: this Court acts in excess of jurisdiction to resolve said cause in any other manner than to remand with instructions to strike the false record.

In all cases when the Court is unknowingly acting on a false record, there was no vesting of power, and the very opinions of this Court are void. How many times has this happened?

The chain reaction resulting from the false appearance of facts in the nuclei of the federal judiciary was first replicated July 16, 1945, at the Trinity Site.

FACTS ESTABLISHING JURISDICTION

Respondent Steven Mac is only one of hundreds –possibly thousands–of apostate prosecutors. When viewing that suborning collective as one usurping entity, and reading the recording of our first chain reaction producing said results, through the eyes of people that lived through the deep effects of arbitrary government, false evidence appears throughout it:

But when a long train of abuses and usurpations, ... evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government... a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone,

...to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws;

... of pretended Legislation:

For protecting them, by *a mock Trial*, from punishment for any Murders...

For *depriving* us in many cases, of the *benefits* of Trial by Jury:

For transporting us beyond Seas to be tried for *pretended offences*

For abolishing the free System of English Laws ...establishing therein an Arbitrary government,

... abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has... destroyed the lives of our people.

Our repeated Petitions have been answered only by repeated injury. ... character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

> deaf to the voice of justice
>
> appealing to the Supreme Judge of the world ...
> And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and *our sacred Honor.*

Declaration of Independence

This signing was a Declaration of certain death to many, pledged as the mere life as well as depriving their posterity of all fortune amassed, yet was not the breadth of a pledge to enter war, their *sacred honor* was the additional pledge. To such pious men, this was a pledge of their very souls.

This phrase consumes the Sixth Amendment. For *depriving* us in many cases, of the *benefits* of Trial by Jury:
For *transporting* us beyond Seas to be tried for *pretended offences*

When we apply basic punctuation rules, the Sixth Amendment breaks into three listed groups, two aspects are vital to combat pretended offenses:

> In all criminal prosecutions, the accused shall enjoy the right:
>
> - to a speedy 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;
> - to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

FACTS EVINCING DIRE WANT OF REMEDY

Justice Brandeis warned: "Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." (*Olmstead v. United States*, 277 U.S. 438, 479 (1928), dissenting.)

The petitions *Salguero v. Court of Appeal* No. 23-609 and *Salguero v. California* No. 23-610 are two lanterns. This ride is not just about one man's deprived liberty through the usurpation of our justice system subjecting him alone to absolute despotism. Frander Salguero has a family and friends, this injustice has directly impacted multiple lives. As will be shown post at 27-30, false evidence has impacted many thousands.

The effect of a government of laws that disregards laws yet condoned by courts is evinced by the civil unrest following the murder of George Floyd. And the many others before him.

Yet, the greatest example was the resulting reaction by those humans subjected to "a long train of abuses and usurpations, pursuing invariably... a design to reduce them under absolute Despotism". Finally possessed with videotaped evidence of their oppression they knew "Facts be[ing] submitted to a candid world" would deliver them justice.

Despite their patience, when the laws of California declared their despotism reasonable, their emotional fury erupted on April 29, 1992. Because when "the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." (*Olmstead* at 485)

The victim, despite being more justified than any human to state his grievances, made the bravest declaration of modern times. "People, I just want to say, can't we all get along? Can't we all get along?" –Rodney King, calling for peace and unity on May 1, 1992.

Reminiscent of our most soft-spoken founding father, when Thomas Paine laid the foundation for the Declaration with: "We have it in our power to begin the world over again." *Common Sense*

We are petitioning to restore Article III, the Bill of Rights, and the rule of law to secure liberty and justice for all in our country. The purpose of the other petitions is to establish the right; this petition establishes the solution. Because a right without an adequate and expeditious remedy, is simply no right at all.

To free those victims that had due process itself stolen from them, we seek an appellate review to deliver remedies "with this opinion as are necessary and proper... with all deliberate speed" (*Brown v. Board of Education*, 349 U.S. 294, 301 (1955)).

STATEMENT OF THE CASE

1. The petitions below proved one element of every count was based on known false evidence.[2] Perjury cannot be a "fact [a]s an element of an offense" (*Jones v. United States* 526 U.S. 227, 232 (1999))

Proven here and now; the trial prosecutor engaged in extensive witness coaching, altered documents, suborned perjury, then raised the bar for corrupt intent. What follows is the reason why Frander Salguero was unlawfully convicted, it had

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[2] R.47-76 see App.249a-272a; 290a; 295a.

nothing to do with fact, and everything to do with wicked-premeditated subterfuge.

THE MOST PREJUDICIAL FALSE EVIDENCE IMAGINABLE, *EVER*

2. Respondent—trial prosecutor Steven Mac—asked the following on cross-examination of defense expert Dr. Michael Burke of Olive View, regarding communications with Frander Salguero's wife, Kenia; in this self-defense case involving a knife, the morning the jury would retire to deliberate:

Q- Did she relate to you **that she was hurt or <u>stabbed</u>** in any way?

A- Not that I recall.

Q- That would be **important information** in terms of your analysis of **how dangerous** Mr. Salguero is to other people; right?

A- So, again, I don't recall the conversation. From what I saw in the notes *it said he did drag her and his daughter by the hair to the car or attempted to.*

Q- What I'm asking is, ***additional*** **injuries to the wife or the daughter** would be important in your analysis about whether Mr. Salguero is a danger to others?

A- Correct.

Q- The wife didn't relay to you that his **<u>daughter</u>** was, **<u>in fact</u>**, hurt by Mr. Salguero. **<u>Stabbed</u>** or injured in any way.

A- Again, I don't recall the conversation but I didn't come across that in the notes.

Q- I mean, you would note that if Mr. Salguero **<u>stabbed his daughter</u>**; right?

A- I would think so.

Q- <u>That's an important fact</u>...[3]

Prosecutor Mac knew "the grave danger of prejudice to an accused when evidence of an uncharged offense is given to a jury,"[4] but Mac also "reached the conclusion that the risk of convicting the innocent [wa]s sufficiently imminent" (*id.*), so on the morning of jury deliberations he asked **known false** propensity towards violence questions, certain to have "the effect of admitting the most prejudicial evidence imaginable against an accused"[5] *ever.*

Salguero v. California focuses on the 45 items of evidence, specially recognized by this Court in *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995), and why "this case merits 'favored treatment,'" because "cases in which the record reveals so many instances of the state's failure to disclose exculpatory evidence are extremely rare." (*Id.*, at 455, Stevens, J., concurring) The volume of "first *Agurs* category"[6] violations just from the above is substantial.

After seven years of concealment, a formal motion filed June 21, 2022, resulted in the defense obtaining the exonerating police report on June 30, 2022. The 419 report, "SCAR which is determined to be unfounded, no crime"[7] proves the above were known lies. Not even a pulling of hair, let alone stabbing his own daughter and blushing bride.[8]

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[3] R.1282:11-23; 1285:27-1286:7.

[4] *People* v. *Thompson* 27 Cal.3d 303, 317 (1980)

[5] *People v. Smallwood* 42 Cal.3d 415, 429 (1986) abrogated on grounds said in reference to.

[6] *Kyles* at 433 fn.7

[7] R.203:19-204:18 Suspected-Child-Abuse-Report (SCAR). See Pen. Code, §11165.12 App.129a

[8] App.183a (concealed 419-report).

At the post-conviction discovery hearing on Nov. 18, 2022, Mac assured the trial court: "At that time I turned over discovery pursuant to my obligation under 1054."[9] [10]

Pen. Code, § 1054.1 ("The prosecuting attorney shall disclose... (e) ***Any*** exculpatory evidence.")

Mac then declared, "the **reporting party** was **unconnected to the trial** matter in this case."[11] The trial court did grant item #2, revealing the reporting party's name, "Mike Burke" of "Olive View".[12]

The same Michael Burke[13] that was asked the stabbed-daughter false questions. "In the end, any allegation of suppression boils down to an assessment of what the State knows at trial in comparison to the knowledge held by the defense." (*Giles v. Maryland* 386 U.S. 66, 96 (1967), concur. with plurality.) Mac was hoping to get a rise by keeping his edge secret, because he never notified the defense of Dr. Burke's connection, proven by his claim "the reporting party was unconnected to the trial."

The argument re false stabbing daughter, in part was:

> Do not believe that. Because everything he did, *including how he's behaving afterwards* -- ... And then talks to a doctor three days later who has no idea what happened beforehand, who has *no idea* what *happened in the future*, and brings that one doctor in to court as a defense.

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[9] Discovery statutes (App.115a) R.1739:27-28

[10] The item being litigated was not confidential Pen. Code, §§11167, 11167.5, 11169, App.131a-132a, App.115a §1054.7 (unlawfully redacted).

[11] R.1742:26-27-(transcript).

[12] R.496-(unredacted document).

[13] R.1270:20-(sworn-in).

Not the wife. Not the daughter. *Right*?
... Hold the defendant responsible for his actions.
Hold the defendant responsible for his actions. ...
Hold the defendant responsible for his actions.
...Hold him responsible for that. Hold him responsible for that. Find him guilty.[14]
Lunch recess.

Neither the phrase nor words reasonable doubt, burden, proof, and beyond ever left Mac's lips.

On Thursday at 11:24AM, Mac caused 15 photos (13 exterior, 2 interior) of Frander's car,[15] to be marked People's 7.[16] So he could argue no damage to the *exterior* of the vehicle for his legally and medically unsupported theory. Mac asked the false stabbed daughter questions the following Monday. Why did People's 7-O[17] show a close-up of a child's car seat in the back of Frander's vehicle?

"Because corrupt intent knows no stylistic boundaries,"[18] Mac's plan initiated four days prior.

Salguero VIII promised two cannons would be revealed in this petition. The first was the most prejudicial false evidence imaginable *ever* combined with the concealed exculpatory police report.

Now for the second, the 911 call establishes innocence.

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[14] R.1350:13-14,24-1351:15
[15] R.1403-1410
[16] R.1234:20-28
[17] R.826-(App.281a)
[18] *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989)

HURRY. HURRY, GEORGE! HE'S COMING! GEORGE!
THE 911 CALL WAS A STAGED EVENT

3. The mandamus petition proved the 911 call was staged. To conceal it, Mac altered the 911 transcript removing vital exculpatory facts;[19] this felonious document[20] became the record on appeal.[21]

At trial the second "victim", tendered opposite testimony from the preliminary hearing, even at trial, Mark on direct: "I'm going to play the 911 call... Have you heard this call before? Yes." (R.1240:1-5)
Mark cross-examination: "In fact, the 911 call was the first time I had ever heard that." (R.1260:14-15)

Mark trial cross-examination: "I didn't see the stabbing motion." (R.1247:9-10)
Preliminary hearing, Mark "ha[d] a clear view of the stabbing". (R.914:16-17)

911 Transcript
"C: Lift your hands baby. Hold on. [Unintelligible] You have to get an ambulance here."[22]

911 Audio:
"Mark: God damn it! Yes I saw him stab him! Get an ambulance here!"[23]

That was one of the loudest most forceful shouts in the 911 call, it was not "[Unintelligible]" as

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[19] The heading was the three lookouts in the background of the 911 call warning George the police had arrived. (R.550:38-551:17) App.238a see **bit.ly/Frander3** for 1:23 short video of start of 911, George is yellow text, Mark white, R.20
[20] Pen. Code, §§132, 134 App.107a
[21] Cal. Rules Court 8.320(b)(11); 2.1040. App.133a
[22] R.1011
[23] R.549:16

the altered transcript declared—*prepared in advance* of Mark's testimony.

Q- How about with Mr. Mac, the district attorney?
A- No. We only spoke generically...
...
Q- But you didn't go over the specifics of what you were going to testify to?
A- We didn't go over *any detail.* There was occasions he would say I'm probably going to ask you about that or we are going to talk about that, but *nothing* in any great length or *detail.*[24]

Ten days after the incident, on 7/31/15, George clearly identified Frander in "about two seconds" in the line-up because George saw him "no more than 20 times."[25]

That detective interpreted Frander showing up when "he had an apple and a lottery ticket in his hand"[26] as intent to commit premeditated murder.[27]

Q- When you opened the door, what did you see?
A- I saw Fred[28] with a lottery ticket and an apple in his hand.
Q- When you saw Fred, you didn't recognize him as the person who has been coming over to your house?
A- I said, "Oh, it's Fred, Mark."[29]

911 Transcript
"OP: Did you see what the guy looked like or anything?

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[24] R.1260:22-1261:5
[25] R.640:35;658:16
[26] R.647:3-4
[27] Who was suspended without pay before this case, retired without pay just before trial. R.404. Defense not notified.
[28] Frander's nickname.
[29] R.1175:5-12

C: Yes. We know him. We know him. But, as soon as the victim gets help he'll tell you who it is. I don't know who it is. George. Who was it? [**unintelligible**] Okay. I'll call. I will. I'll call."[30]

911 Audio:
911: –Did we see what the guy looked like or anything?
Mark: [inaudible 00:04:53] Yes, we know him. *We'll* know him, and as soon as the victim is to help, he'll tell you who it is.
911: Okay.
Mark: I don't know who it is. George, who was it? Who was it?
George: **Ask Elston.**
Mark: **Elston.**
George: Ah I think I was framed –
Mark: Okay. I'll call.
George: **He knows this guy.**
Mark: I will, I'll call.[31]

Listening to the audio, it is clear Mark moved the phone closer to George when he said "Ask Elston", and equally clear is that this was not "unintelligible".

4. When we do "ask Elston" Freeman—a central background figure in the case—he tells us: "George had a lot of meetings. I actually only went to the court – or to meetings with he and the DA twice, I think. And all the rest of them, he would tell me about them, but he would go on his own. Or he and Mark would go."[32]

George also reflected on the many pretrial coaching sessions by Mac: "I talked to them actually

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[30] R.1011
[31] R.551:31-552:1
[32] R.407:20-23

when – Before the court case we were talking on a regular basis for a good month and a half," and later, "Every time that I spoke to them, it was in regards to the actual stabbing itself, only"[33] "revealing that the other witness' trial testimony had been intensively coached by prosecutors" (*Banks v. Dretke* 540 U.S. 668, 675 (2004)).

5. The petitions below and this one, establish innocence using testimony from honest, impartial, and unbiased witnesses. The Microphone to what it heard in the 911 call audio, the Thermometer's temperature recordings at a government weather station nearby, the Camera's documenting of efforts to wipe-up blood that had since partially dried, and Science as the expert on blood dry times to establish 30 minutes had lapsed before calling 911.(App.257a-258a)

This Court had occasion to address: people that cannot tell a consistent story at any point they speak, deny knowing someone that they fraternized with "no more than 20 times", attempt to clean the crime scene by wiping-up the blood, after waiting 30 minutes to call 911, while concealing other people on scene and are faking wailing evinced by George speaking normally then Mark covering the phone to run outside turnaround and come back in to George wailing are not acting like victims.[34] "The destruction, suppression or fabrication of evidence undoubtedly gives rise to a presumption of guilt" (*Wilson v. United States* 162 U.S. 613, 621 (1896)). The prosecutor's efforts to erase that from the record render that conclusion: conclusive.

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[33] R.401:24-25;402:5-6

[34] Viewable at **bit.ly/Frander911** is the 911 call with text overlay to point out key aspects, R.20.

Pen. Code, § 29.2 (a) "The intent or intention is manifested by the circumstances connected with the offense."

Proof of the above, and a great deal more, is provided for the Court, App.253a-262a; see App. G generally, containing proof of numerous material aspects that were all known lies.

It is understood that this Court does not care for factual disputes, yet this is worth mentioning: Mac and Mark consumed 25% of Mark's direct examination to establish his claimed vantage of the stabbing,[35] **as looking through a wall** to describe the events.[36] Proven with testimony and photos. (App.265a-272a) How Mac hid the knife in the jury box (App.287a-289a) or Mac's *Napue* record of ***eight*** known false evidence questions in-a-row, (App.290a-293a). Courts do not want to second guess a jury's credibility determination, as they observed the witnesses, yet the witnesses observing Mark the night of the incident declared Mark was no victim of a crime, (App.263a-264a).

George as the aggressor believed Frander would be calling 911, so the methamphetamine trafficker still on probation and Mark focused efforts to clean-up evidence of drugs sales. Switching to the crime scene clean-up but was too late. Then attempted to escape by ambulance. Going to the heading of this section as the lookouts were warning when the police arrived and in between those statements George said, "I can't drive." "Carry on without me."[37]

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[35] R.1220,1223-1230; direct,R.1213-1240

[36] R.56-63;R.555-562.

[37] R.550:38-551:17; App.244a

And why—72 seconds later—when America's heroes showed-up, *the boys-in-blue*, for these attempted murder victims, Mark says: "George, **I'm sorry**, the police are here, but no ambulance. Jesus. It's okay." (App.247a)

Mac's transcript: "George. The police are here, but no ambulance." (R.1012)

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6. If the Court calls up the record, please observe two affidavits, one from each daughter attesting to never being physically harmed by Frander, both dated: "12/18/2021"[38]

Twenty-four months later, no relief. Eighteen months after obtaining the 419 report, no relief. On Oct. 18, 2023, Frander passed 3,000 days in custody after being warrantlessly taken from inside his home on Aug. 1, 2015.

The prosecutor signed the affidavit declaring Frander was the victim of a deadly assault on Apr. 28, 2016, then coached a convicted methamphetamine trafficker to commit perjury—while still on probation — to send the known innocent to prison for life. Then a year later, the tyrant wrote to the parole board, "**Defendant should not be paroled.**" (App.233a)

The known innocent languishing in prison for indeterminate time is unconscionable. A change is needed in our country. Victims of false evidence—of tyranny—deserve more than being forgotten.

A decree tailor fit for the world's most respected and powerful court.

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[38] R.837,841

FEDERAL CONSTITUTIONAL ISSUES RAISED

7. Expounded on in *Salguero v. Court of Appeal*, only key points are laid here for complete-ness sake.

A. The highest state court.

The *Napue* duty was "definitely brought to the court's attention." (*Live Oak Assn. v. R.R. Comm*, 269 U.S. 354, 357 (1926)) The California Supreme Court's approbating denial, stated: the writ "is denied. To the extent the petition raises habeas corpus claims (see Pen. Code, §1473, subd.(b)(1)), the denial is without prejudice to filing..." (App.46a). It is not independent when the state law cited is the federal issue raised. Pen. Code §1473(b)(1) ("False evidence") (App.122a) "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it" (*Raley v. Ohio*, 360 U.S. 423, 436 (1959)) (See App.177a issue raised in that court.)

"This section *does not* limit the grounds for which a writ of habeas corpus may be prosecuted or *preclude the use of any other remedies*." (Pen. Code, §1473 (d))

B. The intermediate state court.

The petition began with the *Napue* duty to correct and Fourteenth Amendment, plus a prolonged procedure was laid out for it regarding that duty. Its void order recognized the federal cause by discussing ministerial act. Then separately discussing habeas while dismissing it with prejudice by noting it had discretion to dismiss without, yet did not. While ignoring the statute that mandated direct filing in the court to have it recall its void appeal. The text as raised below is laid out at App.169a-176a

C. The usurpation of judicial power to review.

8. In response to the *Napue* duty to correct, respondent court denied[39] finding: "The petition does not seek performance of a ministerial act", regarding compliance with this Court, deemed merely discretionary, by citing a case to clarify: "Discretion... is the power conferred on public functionaries to act officially according to the dictates of their own judgment" (*AIDS Healthcare Foundation v. Los Angeles County* 197 Cal.App.4th 693, 700 (2011)) communicating suborning perjury is discretionary.

That case was cited in a 51-page near treatise that had just issued on prosecutorial discretion "only to compel it to exercise its discretion in some manner.'" ([Citation]; accord, *AIDS Healthcare...* 700-701; [Citations]... in the proper exercise of such discretion or judgment" (*Ass'n of Deputy Dist. Attorneys for L. A. Cnty. v. Gascón*, 79 Cal.App.5th 503, 528 (2022)).[40]

Reviewing the request sent to Mac to perform his ministerial duty under *Napue* and *Brady* reveals that Mac lied to the trial court (a felony Pen. Code, § 141(c) App.107a) and refused to act at all (App.180a) "'failed to act, and its failure to act is arbitrary, beyond the bounds of reason, or in derogation of the applicable legal standards.' (*AIDS Healthcare...* at p. 704,...)... Mandate is also 'employed to restrain a public official from the unlawful performance of a duty.' [Citation.]" (*Gascón* at 529)

In California "the prosecutor's own discretion is not subject to judicial control at the behest of persons **other than the accused**. [Citations]" (*Dix v.*

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[39] App.54a

[40] Review granted "may be cited...for its persuasive value," 297 Cal.Rptr.3d 633 (Cal. 2022) cited for its collection of cases, not the holdings.

Superior Court, 53 Cal.3d 442, 451 (1991) emphasis added)

When discussing the President and his subordinate this Court agreed with the above.

> ... when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he... cannot at his discretion, sport away the vested rights of others.
>
> ... But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy.

Marbury v. Madison, 5 U.S. 137, 166 (1803)

Proof of "when he is directed peremptorily to perform certain acts", was set out in the petition before respondent court (App.169a-170a). Usurping both this Court's judicial power and *the* District Attorney's command, while claiming Mac possessed it all.

A state intermediate court declaring unanimous holdings of this Court merely discretionary is a clear "judicial usurpation of power" but also of the Legislature by declaring discretion to suborn perjury, fabricate evidence, and conspire to falsely imprison, as well as the executive as noted above, as to mandamus: "clearly derelict in failing to act, where the inaction or action turns on a mistake of law, then judicial relief is often available." (*Panama Canal Co. v. Grace Line, Inc.*, 356 U.S. 309, 318 (1958))

No deputy executive is granted such plenary authority, the grant usurps the Supremacy Clause and "when a court has no judicial power to do what it

purports to do — when its action is not mere error but usurpation of power — the situation falls precisely within the allowable use of § 262." (*De Beers Mines v. United States* 325 U.S. 212, 217 (1945) (cited in the history as the reason for the current language of 28 U.S.C. §1651) See *Trump v. Vance* 140 S.Ct. 2412, 2428-29 (2020) ("*Ex parte Young*, 209 U.S. 123, 155–156, (1908) (holding that federal courts may enjoin state officials to conform their conduct to federal law)."); see also *Garland v. Aleman Gonzalez*, 142 S.Ct. 2057, 2064 (2022) (defining enjoin consistent with mandamus).

REASONS FOR GRANTING THE PETITION, ADDRESSING RULE 20 FACTORS FOR ISSUANCE OF MANDAMUS

Although courts have not confined themselves to an arbitrary and technical definition of jurisdiction, only exceptional circumstances amounting to a *judicial usurpation of power*, or a clear abuse of discretion, will justify the invocation of this extraordinary remedy.

As the writ is one of the *most potent weapons in the judicial arsenal*, three conditions must be satisfied before it may issue. First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires, — a condition *designed to ensure that the writ will not be used as a substitute for the regular appeals* process. Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable. Third,... the writ is appropriate under the circumstances. These hurdles, however demanding, are not insuperable.

Cheney v. U.S. Dist. Court for D.C. 542 U.S. 367, 380-81 (2004) (all citations and added punctuation omitted; emphasis added.)

A. No adequate means, not a substitute for appeal.

Through both lines *Salguero v. California* and *Salguero v. Court of Appeal,* despite fighting hard for the state to grant and/or reinstate appellate rights deprived in violation of the laws and constitutions, the state refuses Frander that right.

Legal causes were recently removed thus cleared the way for mandamus because he "could not bring his fabricated evidence claim under § 1983 prior to favorable termination of his prosecution." (*McDonough v. Smith*, 139 S.Ct. 2149, 2156 (2019)) After the highest state court denied, under the *Rooker-Feldman* doctrine this Court became the only court.[41]

Rule 20.1 "adequate relief", the modifier is important, "so long as a substantial and efficient remedy remains" (*Crane v. Hahlo*, 258 U.S. 142, 147 (1922)). In California, habeas is not a remedy. "It 'does not decide the issues and cannot itself require the final release of the petitioner.'" (*People v. Romero*, 8 Cal.4th 728, 738 (1994)))

Frander was deprived aid of federal habeas, by a charlatan's petition raising insufficient evidence in a one-page fact presentation— without conducting *any* investigation—then after admitting to the federal magistrate "this is my first Habeas Corpus petition" (App.194a) he **abandoned** his client.

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[41] Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 292 (2005)

"Although Petitioner requested and received an extension of time to file a Traverse (Docket Entry Nos. 12-14), Petitioner did not file a Traverse or request additional time to do so.... the Petition be DENIED and this action be DISMISSED with prejudice."[42] Adopted and ordered by the federal judge, (App.60a-62a). Thus, the known perjury—according to an Act of Congress— that was "not traversed, shall be accepted as true". (28 U.S.C. §2248) But there is hope through this Court "except to the extent that the judge finds from the evidence that they are not true." (*Id.*)

The above particularity addresses Rule 20.3. More particularly "why the relief sought is not available in any other court" is "because only this Court or a constitutional amendment can alter our holdings" (*Knick v. Township of Scott* 139 S.Ct. 2162, 2177-78 (2019).) Thus why this mandamus petition aids appellate review "to set the record straight"[43] for the country—habeas was replaced by mandamus via *Napue*'s duty to correct when jury right denied, *Beacon Theatres, infra.*

B. Right to issuance of the writ is clear and indisputable.

"'A lie is a lie... if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth'" (*Napue* at 269-70) 21-days[44] prior held "under the All Writs Act, 28 U.S.C. § 1651... the right to grant mandamus to require jury trial where it has been improperly denied is settled." "There can be no doubt that a litigant is entitled to a writ of

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[42] *Salguero v. Sullivan* CV 19-07414-CJC (AS) Document 16, p.2:6-11

[43] *Banks* at 676

[44] A typo in certiorari petition errantly states 11 days.

mandamus to protect a clear constitutional or statutory right to a jury trial." (*Beacon Theatres v. Westover*, 359 U.S. 500, 511 (1959))

> "[W]hen a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance," and it was no objection that such an order might be sought in the federal courts against a state officer.
>
> *Puerto Rico v. Branstad*, 483 U.S. 219, 227 (1987)

C. Appropriate under the circumstances.

The 5-6 split between the circuits, the last five years in the circuits:

Known perjury may stand:

1) *United States v. Williams*, 974 F.3d 320 (3d Cir. 2020)
2) *United States v. Reyes-Romero*, 959 F.3d 80 (3d Cir. 2020)
3) *Whitley v. Lumpkin*, No. 21-50176, (5th Cir. Dec. 15, 2022)
4) *Storey v. Lumpkin*, 8 F.4th 382 (5th Cir. 2021)
5) *In re Jackson*, 12 F.4th 604 (6th Cir. 2021)
6) *Kirkman v. Thompson*, 958 F.3d 663 (7th Cir. 2020)
7) *Coleman v. City of Peoria*, 925 F.3d 336 (7th Cir. 2019)
8) *Meyers v. Gomez*, 50 F.4th 628 (7th Cir. 2022)
9) *Dansby v. Payne*, 47 F.4th 647 (8th Cir. 2022)
10) *United States v. Ruzicka*, 988 F.3d 997 (8th Cir. 2021)

Known perjury must fall:

1) *Juniper v. Davis*, 74 F.4th 196 (4th Cir. 2023)

2) *Truman v. Orem City*, 1 F.4th 1227 (10th Cir. 2021)
3) *Fontenot v. Crow*, 4 F.4th 982 (10th Cir. 2021)
4) *Farrar v. Raemisch*, 924 F.3d 1126 (10th Cir. 2019)
5) *Hall v. Flournoy*, 975 F.3d 1269 (11th Cir. 2020)

THE COURT IS PRESENTED "EXTRAORDINARY REMEDIES, [AS] ARE RESERVED FOR REALLY EXTRAORDINARY CAUSES"

All concerns abided; we arrive as a clean vehicle to honor *Napue* when needed most: avoiding "the unfortunate consequence of making the judge a litigant", the State ensured (R.67-70) "appeal is a clearly inadequate remedy" and because "extraordinary remedies... are reserved for really extraordinary causes" (*Ex Parte Fahey*, 332 U.S. 258, 259-60 (1947)) we present **the most compelling reasons:**

2,183

Two thousand
One hundred
Eighty
Three known victims of false evidence that have been exonerated.

93 of them in 2023.

We are not alone, there are thousands waiting for this Court to clear up the split nation. Those 93 managed through a legal landscape that most of the country requires proving innocence to escape a guilty verdict that was never proven.

These stats are from Univ. Mich. Law School, National Registry of Exonerations.[45]

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[45] Available here:

The length of time in years between conviction to exoneration, for each of those 93 human beings—only the underlined 15 did not spend that *entire* time in prison:

1, 5, 3, 6, 8, 9, 13, 2, 8, 4, 7, 7, 6, 9, 8,
14, 19, 15, 15, 17, 12, 10, 15, 11, 18, 19, 10, 18,
13, 13, 19, 16, 17, 10, 10, 10, 19, 10, 11, 12, 18, 12,
27, 25, 22, 29, 22, 21, 23, 23, 27, 26, 29, 22, 28,
29, 21, 27, 22, 22, 23, 23, 26, 28, 29, 26, 28, 27, 21,
28, 24, 21, 29, 25, 24,
33, 33, 32, 39, 30, 33, 30, 32, 31, 31, 33, 36, 33, 32,
42, 40, 48.

For 78 of those innocent souls—victims of false evidence—the numbers represent years of their lives in prison because of false evidence. Over 1,500 years actual time served for 78 innocent souls.

It is easy to glance over each number, but every single Arabic numeral above, is years in prison or years of false stigma for an innocent person.

That list is only those exonerated this very year, 2023.

2,090 human lives are not on that list.

"All perjured relevant testimony is at war with justice" (*In re Michael* 326 U.S. 224, 227 (1945)).

Justice is losing the war.

It took Mr. Miller 12 years, Mr. Napue 21 years, Mr. Pyle 7 years, and Mr. Mooney 18 years to reach this Court. After Mr. Mooney was sent back down, the state supreme court left him in prison. Heavily discrediting his reliance on a witness, that very witness later admitted to being pressured by the prosecutor to give perjured testimony. In 1939 he was

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https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx

exonerated. But his co-defendant would not be freed until 1961. Both by pardons.

Mr. Mooney spent 23 years in prison, as a political prisoner of California. He had different views, favoring labor parties, outspoken and disliked, he was targeted by tyrants.

Returning to our brave 93 souls, there is another number 50 that reside from those 93. Not in, but from, because 50 of those 93 innocent humans were in prison for murder. So that also means 50 murderers were left free, because some prosecutor *just knew* this guy had done it. That is 50 murdered humans without justice.

Of those 93: 15 were white, 16 Hispanic, 2 "other" (but from Hawaii), 1 Native American, totaling 34, no Asians. Leaving 59 for one particular race...

This grossly disproportionate abuse is a modern weapon of racism.

Exoneration by state: Illinois 18, New York 14, Penn. 13, Texas 10, California 5, Ohio 4, Maryland 4, remaining 1 or 2.

Also, the number 2,183 are **only** exonerations **since 1989**. There were 1,826 weeks from Jan. 1, 1989, to Jan. 1, 2024. One false evidence exoneration per week for 35 years straight with a bonus 14-months of one-per-day for 355 days.

In total there were 3,425 exonerations since 1989 as: 860 false or misleading forensic evidence (439 cross-referenced false evidence); 432 for false confessions (324 cross-referenced), 2,048 for official misconduct (1,688 cross-referenced), 929 were for ineffective assistance (556 cross-referenced), 938 mistaken witness identification (356 cross-referenced).

That leaves 2,183 false evidence and 1,242 with no connection to false evidence. From a *Strickland v. Washington* 466 U.S. 668 (1984) point-of-view there were 373 that did not crossover with false evidence. Official misconduct was defined as abuse of power in judicial proceedings, assuming that to be *Brady* then 360 did not crossover with false evidence.

This Court's main jurisprudence has been *Brady* and *Strickland* accounting for 733 exonerations since 1989. Meanwhile 2,183 exonerations were for false evidence. Which this Court has not granted certiorari for known false evidence since *Miller v. Pate*, 386 U.S. 1 (1967) and for unknown false evidence since *Giglio v. United States*, 405 U.S. 150 (1972).

This Court addresses 21% of wrongful convictions leading to exonerations, while the root cause of 64% remains unaddressed for over half a century. Confused courts without guidance make winning challenging; we exemplify this difficulty by dismantling the case yet still not securing victory.

This case has been preparing to present this Court with the correct analysis, facts and true remedy: thus most appropriate under the circumstances to secure a most *extraordinary* remedy.

THE CONSTITUTION ESTABLISHES THE RIGHT TO BE FREE WHEN INNOCENT

The presumption of government correctness, *Bute v. Illinois*, 333 U.S. 640, 671-72 (1948), has no place in false evidence cases. "Prosecutors' dishonest conduct or unwarranted concealment should attract no judicial approbation. [Citation.]. ('The prudence of the careful prosecutor should not... be discouraged.')." (*Banks* at 696)

If the government creates a false narrative to impose unwarranted punishment and is exposed, they forfeit the chance to present their case.

"The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." (*Burks v. United States* 437 U.S. 1, 11 (1978)) Logic dictates that a failure to muster precludes the present conviction from sustaining as well.

Because failure to marshal evidence is by definition innocence; and inherently fundamental to the entirety of our legal system is the federal constitutional right to not be imprisoned when innocent. Therefore, soundly resolved is "an asserted federal constitutional right to be released upon proof of 'actual innocence.' Whether such a federal right exists is an open question. We have struggled with it over the years," (*Dist. Attorney's Office v. Osborne*, 557 U.S. 52, 71-72 (2009)) but that question was long ago foreclosed and any struggle "offends a fundamental and deeply rooted principle of justice." (*Nelson v. Colorado*, 137 S.Ct. 1249, 1258 (2017) Alito, J., conc.)

> Indeed, concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. That concern is reflected... [in] ('The maxim of the law... that it is better that ninety-nine... offenders should escape, than that one innocent man should be condemned').
>
> *Schlup v. Delo* 513 U.S. 298, 325 (1995)

The maxim's meaning was explained in the Boston trial, by Mr. John Adams at the bar:

> "[W]e are to look upon it as more beneficial, that many guilty persons should escape unpunished,

> that one innocent person should suffer. The reason is, because it is of more importance to the community, that innocence should be protected, than it is, that guilt should be punished; for guilt and crimes are so frequent in the world, that all of them cannot be punished; and many times they happen in such a manner, that it is not of much consequence to the public, whether they are punished or not. But when innocence itself, is brought to the bar and condemned, especially to die, the subject will exclaim, it is immaterial to me whether I behave well or ill, for virtue itself is no security. And if such a sentiment as this were to take hold in the mind of the subject that would be the end of all security whatsoever."[46]

We are a government of laws, not of humans; enshrined by Adams in the world's oldest living constitution.

Benjamin Franklin raised the English maxim of 10 guilty men to the American maxim of 100.

It cannot be that the founders Franklin and Adams, with their belief of a priority to set the guilty free over incarceration of innocence, both as first and second editors to the Declaration of Independence, intended anything less than instant release upon proof of innocence.

> Constitutional guarantees are not arbitrary pronouncements adopted to protect the guilty, and to make it difficult for sincere hardworking prosecutors. They are the result of hundreds of

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[46] Wemms, William, *The trial of the British soldiers,* (1807) pp. 82-83 First edition, Boston, 1770, taken in shorthand by John Hodgson.
See App.213a-214a for the continued history after his argument.

> years of struggle in fighting governmental oppression. They are necessary to protect the innocent.
>
> *People v. Talle*, 111 Cal.App.2d 650, 678 (1952)

FALSE EVIDENCE PROVES INNOCENCE *DE JURE*

"[W]e explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." (*Winship*, *supra*) The "presumption of innocence 'lies at the foundation of our criminal law.'" (*Nelson* at 1256) "Once a defendant has been afforded *a fair trial* and convicted of the offense for which he was charged, the presumption of innocence disappears." (*Herrera v. Collins,* 506 U.S. 390, 399 (1993), italics added.) Thus, because this "Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair" (*United States* v. *Agurs*, 427 U.S. 97, 103 (1976)) then *ipso facto*, "the presumption of innocence [re]appears."

FALSE EVIDENCE PROVES INNOCENCE *DE FACTO*

The federal innocence test requires that our "reasonable jur[y] would... conscientiously obey the instructions... requiring proof beyond a reasonable doubt." (*Schlup* at 329) Here "more likely than not any reasonable juror would have reasonable doubt" (*House v. Warden* 547 U.S. 518, 538 (2006)) because no reasonable juror finds perjury establishes "the truth of the charge" and therefore is "entitled to an acquittal" (Pen. Code, §1096, App.117a).

Because in our system the "analysis must incorporate the understanding that proof beyond a reasonable doubt marks the legal boundary between

guilt and innocence." (*Schlup* at 328; see Evid. Code, §413 App.156a)

UBI JUS, IBI REMEDIUM

Where there is a right, there is a remedy. "The maxim *ubi jus, ibi remedium* lies at the very foundation of all systems of law," (*United States v. Loughrey* 172 U.S. 206, 232 (1898), dissent)

"The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." (*Marbury* at 163)

> False testimony in a formal proceeding is intolerable. We must neither reward nor condone such a "flagrant affront" to the truth-seeking function of adversary proceedings. [Citations.] If knowingly exploited by a criminal prosecutor, such wrongdoing is so "inconsistent with the rudimentary demands of justice" that it can vitiate a judgment even after it has become final. *Mooney v. Holohan*... Perjury should be severely sanctioned in appropriate cases.
>
> *ABF Freight System, Inc. v. Nat'l Labor Relations Bd.,* 510 U.S. 317, 323 (1994)

"[T]here is a clearly established constitutional due process right not to be subjected to criminal charges on the basis of false evidence... deliberately fabricated by the government." (*Devereaux v. Abbey,* 263 F.3d 1070, 1074-75 (9th Cir. 2001) (en banc))

"But a right implies a remedy; and where else could the remedy be deposited, than where it is deposited by the Constitution?" Federalist No. 43 (Madison) "The ideas of right and remedy are inseparable. 'Want of right and want of remedy are

the same thing.'" (*Edwards v. Kearzey* 96 U.S. 595, 600 (1877))

U.S. Const. amend. IX ("The enumeration in the Constitution, of *certain rights*, shall not be construed to deny or disparage others *retained* by the people.") "We hold these truths to be self-evident... certain unalienable Rights, that among these are Life, Liberty and the pursuit of" Remedy, "a remedy is the means employed to enforce a right or redress an injury." (*Lewis v. Lewis Clark Marine, Inc.*, 531 U.S. 438, 445 (2001))

"To deny the remedy would be to deny the right" (*Collins v. O'Laverty* 136 Cal. 31, 35 (1902)) To deny the remedy would be to condone the wrong.

THERE IS ONLY ONE THING MORE FUNDAMENTALLY UNFAIR THAN FALSE EVIDENCE.

The injustice of false imprisonment is exacerbated when victims, presenting evidence of government misconduct, are subjected to a convoluted and time-consuming process to obtain restitution of due liberty. It is inherently "fundamentally unfair" (*Agurs, supra*) to impose stringent procedures in a labyrinthine system, navigating obscure barriers crafted by non-legislative entities, on those seeking justice from false evidence. Especially because the government itself made a mockery of the rules and disregarded all procedure.

When a crime victim needs help, say if falsely imprisoned, a felony, they simply call 911 and the police rush over and free them. Yet when this crime is perpetrated by the government itself, it takes years and terribly complex procedure for the victim to be freed.

GUIDANCE FROM THIS COURT IS NEEDED THROUGH AN INTERPRETATION OF A CONSTITUTIONAL REMEDY

Granting declaratory relief by constructing the process due the innocent, is not theoretical advisory, but "a case of actual controversy" (28 U.S.C. § 2201(a)) proven by the lower courts' treatment on the path here. We are not alone, e.g., *Ex parte Escobar*, WR-81,574-02, at *1-2 (Tex. Crim. App. Sep. 27, 2023) (disregarded proof and this Court's order after government admission of error).

THE REMEDIAL PROCEDURE OFFERED FOR THE COURT'S CONSIDERATION

After many pages with cases to explain, it was realized the Court would prefer short and to the point.

The procedure to obtain relief:

1. Establish an aspect of the record was false.[47]
2. A *should have known* connection between proof provided of falsity and the government; effecting later relief invoked, but not a bar to proceeding, *Winship, Pyle v. Kansas* 317 U.S. 213 (1942), *Giglio*, and *Agurs*.
3. Prepare a mandamus petition with proof of conviction, and proof from steps 1 & 2, *Napue*, *Beacon Theatres*.
4. Upon filing, if in order, the trial court issues the alternative writ to the trial prosecutor or office.
5. The government has 30 days to respond and prove:
    a. The claimed false aspect of the record was not in the record; or

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[47] See App.225a definition analysis; and *Miller* oral argument App.215a, 217a

b. The claimed proof of falsity was itself fabricated; or
c. Concede, *California v. Trombetta*, 467 U.S. 479, 485 (1984) App.170a-171a

6. If 5 a or b appears to create a genuine issue, then that issue is set for a jury to determine if false evidence was presented.[48] Offering party has burden by preponderance as to their position, *Schlup, House.*
7. If an aspect of the record is proven false and not sufficiently disproven under 5 through 6 then if the prosecutor has not already so moved, the court orders the prosecutor to make application for the record to be ordered stricken, *Napue.*
8. If the unknown false aspect relates to an element of an offense, *Winship*, or any known false evidence, *Miller*, then double jeopardy attaches, *Burks*. If not, then not.
9. If no fault is due the government then they did not forfeit their trial right and can retry, or not, or charge the perjuring witness.
10. Upon 7 occurring and 8 found, then immediate release, *Nelson*. If 7 but no 8, then release or bail set for serious cases; basic procedure.
11. Comity is a two-way street, if a trial judge disregards the process required, the defendant has the option to proceed vertically or

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[48] Code Civ. Proc. § 1090 ("If a return... raises a question... of **fact**... affecting the substantial rights... upon the supposed truth of the allegation of which the application for the writ is based... the question to be **tried before a jury**");
28 U.S.C. § 1861 ("It is the policy of the United States that all litigants in Federal courts **entitled to trial by jury** shall have the right to... petit juries") 28 U.S.C. § 1872 ("In all original actions at law in the Supreme Court against citizens of the United States, **issues of fact shall be tried by a jury**.")

horizontally to federal court to enforce this right (28 U.S.C. § 1331)[49] expressly allowed by Congress for this event, 28 U.S.C. § 1443.[50]

Seems simple and easy for everyone. And consistent with precedent, *Merrill Lynch, Pierce, Fenner Smith v. Curran*, 456 U.S. 353, 374-76 (1982); *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976); *Massachusetts v. Upton*, 466 U.S. 727, 737 (1984). Please always remember Mr. Miller was two days away from execution on a case that appeared impenetrable and was all known false. Plus, Franklin wanted 218,300 guilty to be freed to spare those 2,183. The above is more than fair.

We have been sacrificing many innocent to ensure no guilty go free; 50 of the 93 were murder charges, the guilty went free.

When it comes to perjury— violating Oath under the common law defiles the Creator's oversight and ensures an eternity of damnation—[51] Justitia will reward nothing less than the victim's rapid release;

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[49] ("The district courts **shall have original jurisdiction** of all civil actions **arising under the Constitution**, laws, or treaties of the United States.") 28 U.S.C. § 2072 ("(a) The Supreme Court shall have the power to prescribe **general rules of practice and procedure** and rules of evidence for cases in the United States district courts")

[50] ("Any of the following **civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court** of the United States...: (1) Against any person who is denied or **cannot enforce in the courts of such State a right under any law** providing for the **equal civil rights** of citizens of the United States, or of **all persons within the jurisdiction** thereof; (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.")

[51] See App.228a for 1883 legal definition.

for she knows if not, it would be siding with the wrong side of good and evil.

Which is why this Court is expressly authorized by Article VI to create such procedure and direct mandamus at the state judicial and executive officers: Article VI "This Constitution, and the Laws of the United States... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.
...all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;" Article III "The judicial Power ... shall be vested in one supreme Court" "extend to all Cases" "arising under this Constitution, the Laws" with revisory power "both as to Law and Fact".

SUMMATION

Our founders' moral compass and philosophical guide, the father of the separation of powers, advises:

"There is no crueler tyranny than that which is perpetrated under the shield of law and in the name of justice."

— Montesquieu, 1742

"Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example." (*Olmstead, supra*).

We are sprinting towards the very events that caused a Declaration "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government". Following the peaceable wishes of Mr. King and teachings of Dr. King we seek the former, "to alter" by "right of the people *peaceably* to

assemble, and to petition the Government for a redress of grievances." (U.S. Const. amend. I).

With immense gratitude for the time these petitions have consumed from the Court and staff, in hopes to reduce the national load as a result.

PRAYER

As alternative prayers: accept the uncontested facts established in the record and GVR this cause; or through supervisory powers order the federal judge to *nunc pro tunc* grant the petition in App.60a-62a for failure of the State to comply with 28 U.S.C. §2254(f).

Any other order, process, papers that furthers the cause of justice, delivering to three children their innocent father back home.

> 28 U.S.C. §2106 The Supreme Court... may... vacate, set aside or reverse any judgment... or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Yet, Frander Salguero has not taken the road not travelled with a prayer just for one, the primary prayer is designed to effectuate relief for all.

Moving now that an order and rule be entered and issued directing the Court of Appeal of California, Second Appellate District, Division Five, to show cause why a writ of mandamus/prohibition should not be issued against that court in accordance with the following prayer.

WHEREFORE, it is so prayed for our true and only "one supreme Court" of these United States to grant this petition; issue its mandate to respondent the Court of Appeal of California, Second Appellate District, Division Five prohibiting it from continuing

to permit noncompliance with *Napue*; and for this Court to directly order or compel respondent court to then order: respondent District Attorney of Los Angeles County, George Gascón, to instruct his deputy prosecutor Steven Mac to present himself forthwith to respondent court and therein correct the false record in *People v. Salguero* Nos. MA066642 and B278249 and make application to ensure that the conviction "must fall under the Fourteenth Amendment" (*Napue* at 269). The authority was set out for respondents to follow, (App.169a-173a).

Further praying to shorten Rule 45.2 time to *forthwith*, to prevent further delayed justice and to preclude the continuation of a prisoner of injustice.

Because it is our responsibility to each other, as "[t]he solitary individual who suffers a deprivation of his constitutional rights is no less deserving of redress than one who suffers together with others" (*Steffel v. Thompson* 415 U.S. 452, 474 (1974)) we pray for this Court to guide all the lower courts, the advocates of liberty, and those solitary victims suffering in silence. Resolving by per curiam order to swiftly lead others equally waiting or on grant of full review.

If we did not seek mandamus on *The Road Not Taken*, the relief from *Napue* would be given to Mac, not Frander. The apostates now must take heed—tyranny shall receive no quarter; only consequence. "And that has made all the difference."

It is so prayed before our guardians of Justice.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,
FRANDER SALGUERO
PETITIONER PRO SE