

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

**24-5475**

**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES

**FILED**

**JUL 12 2024**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**JOSHUA JOEL ZAMORA GONZALES** PETITIONER  
(Your Name)

**CALIFORNIA VICTIM  
COMPENSATION  
BOARD  
ET AL** vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

**THE COURT OF APPEAL OF THE STATE**

**OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION TWO**

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

PETITION FOR WRIT OF CERTIORARI

**JOSHUA JOEL ZAMORA GONZALES** <sup>J.I.D.</sup> # **7105233**  
(Your Name)

**FRESNO COUNTY JAIL P.O. Box # 872 (MJB)**  
(Address)

**FRESNO, C.A. 93712**  
(City, State, Zip Code) (PRO SE)

\_\_\_\_\_  
(Phone Number)

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QUESTION(S) PRESENTED

1. DOES A STATE PROCEDURE VIOLATES DUE PROCESS, WHEN A PIECE OF EVIDENCE IS LITIGATED THROUGH BRIEFING AND CONSIDERED BY THE COURT. BUT THE OPINION DOES NOT FULLY ADDRESS THAT EVIDENCE. CAN IT BE CALLED NEW EVIDENCE WHEN THE PRESUMPTION OF INNOCENCE IS IN QUESTION?
2. WHEN A COMPENSATION STATUTE STATES A FEDERAL HABEAS IS BINDING TO THE HEARING. DOES IT VIOLATE DUE PROCESS TO EXCLUDE THE FINDINGS OF THE HABEAS?

## 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:

PEOPLE OF THE STATE OF  
CALIFORNIA - REAL PARTY IN  
INTEREST

## RELATED CASES

- GONZALES V. GIPSON, 701 FED. APPX 558, CASE NO. 13-56498  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, JUDGEMENT ENTERED JULY 3, 2017
- SUPERIOR COURT OF SAN BERNARDINO COUNTY, SUPER. CT NO. FSB804072  
FACTUAL INNOCENCE HEARING JUDGEMENT ENTERED - JULY 24, 2018
- CALIFORNIA VICTIM COMPENSATION BOARD CLAIM NO. 17-ECO-12  
JUDGEMENT ENTERED - SEPT. 17, 2020
- GONZALES V. CAL VICTIM COMP. Bd., 2022 CAL. SUPER LEXIS 50524,  
CASE NO. 20STCPO4185, SUPERIOR COURT OF LOS ANGELES  
JUDGEMENT ENTERED - JULY 18, 2022
- GONZALES V. CALIFORNIA VICTIM COMPENSATION Bd., 98 CAL. APP 5TH  
427, CASE NO. B323360, COURT OF APPEAL OF CALIFORNIA, SECOND  
APPELLATE DISTRICT DIVISION TWO, JUDGEMENT ENTERED - DEC. 29, 2024
- GONZALES V. CALIFORNIA VICTIM COMPENSATION Bd., 2024 CAL. LEXIS  
2069, CASE NO. S283777, SUPREME COURT OF CALIFORNIA,  
JUDGEMENT ENTERED - APRIL 17, 2024

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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 \_\_\_\_\_ 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 OF CALIFORNIA court appears at Appendix A to the petition and is

- ☒ reported at 98 Cal. App. 5th 427; 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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☒ A timely petition for rehearing was thereafter denied on the following date: APRIL 17, 2024, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

UNITED STATES CONSTITUTION, AMENDMENT V.

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

UNITED STATES CONSTITUTION, AMENDMENT XIV

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW. NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

WRIT OF ADMINISTRATIVE MANDAMUS (CALIFORNIA CODE OF CIVIL PROCEDURE 1094.5 SUBD(A)(3) (APPENDIX A) PG D-13)

CALIFORNIA PENAL CODE 4903, 1485.5 AND 1485.55 (APPENDIX F PG 1-3)



# STATEMENT OF CASE

## 1. NINTH CIRCUIT PROCEEDING

GONZALES SOUGHT FEDERAL HABEAS CORPUS RELIEF IN THE NINTH CIRCUIT COURT OF APPEALS. GONZALES HABEAS WAS GRANTED THAT THE EVIDENCE ADMITTED IN TRIAL WAS INSUFFICIENT TO SUPPORT GONZALES CONVICTION. WHEN APPLYING JACKSON V. VIRGINIA 443 U.S. AT 326 IN FAVOR OF THE PROSECUTION THE EVIDENCE DID NOT ESTABLISH GONZALES WAS THE SHOOTER BEYOND A REASONABLE DOUBT AND GAVE 6-REASON (APPENDIX C pg. 5-7)

## 2. ADMINISTRATIVE PROCEEDING SEEKING COMPENSATION

GONZALES FILED A CLAIM WITH THE CALIFORNIA VICTIM COMPENSATION BOARD (THE BOARD WILL BE USE FOR SHORT) SEEKING \$450,240 AS COMPENSATION FOR THE 3,216 DAYS (140 PER DAY) OF INCARCERATION UNDER THE CONVICTION. UNDER THIS PROCESS, CALIFORNIA HAS DIFFERENT STATUTES SUCH AS (C.A. PENAL CODE 4900, 4903 AND HABEAS STATUTE 1485.5 AND 1485.55. (APP. F pg. 1-3))

- THE PROCEEDING WERE STAYED SO GONZALES CAN PETITION FOR A FINDING OF FACTUAL INNOCENCE. THE PETITION WAS DENIED. (APP. A pg. 8-9)

### • HEARING

GONZALES HAS TO PROVE HE IS FACTUAL INNOCENCE BY A PREPONDERANCE OF EVIDENCE. GONZALES SUBMITTED THE NINTH CIRCUIT OPINION DUE TO CA LAW § 4903 SUBD (B) AND 1485.5 (C) (D) (E) (APP. A pg. 3) NO EVIDENCE WAS EXCLUDED FROM <sup>TRIAL</sup> MAKING THE OPINION BINDING TO THE BOARD (APP. A pg. 10) - THE PEOPLE INTRODUCE A ENHANCED AUDIO RECORDING OF GONZALES POST-ARREST INTERVIEW THAT WAS SUBMITTED IN TRIAL CLEARING A "INAUDIBLE" THAT GONZALES ADMITTED THAT HE HAD ASKED THE MEN ON THE STREET CORNER "OH, WHERE ARE YOU FOOLS FROM DAWG" (APP. A pg. 9) THE BOARD TOOK THIS AS NEW EVIDENCE (APP. A pg. 25) GIVING THE ATTORNEY GENERAL A OPPORTUNITY TO CHALLENGE THE OPINION 6 FINDINGS. GONZALES ARGUED EVEN IF THE INAUDIBLE IS CLEAR UP THE STATEMENT WAS CONSIDER BY THE NINTH CIRCUIT.

AND THE OPINION SHOULD BE BINDING.

- THE BOARD ISSUE ITS RULING AND MADE CERTAIN FINDING BINDING (App. A pg. 10-11)

- ADMINISTRATIVE MANDAMUS

GONZALES FILED A PETITION FOR A WRIT OF ADMINISTRATIVE MANDAMUS IN THE LOS ANGELES COUNTY SUPERIOR COURT OF THE BOARD'S DENIAL.

(CALIFORNIA CODE OF CIVIL PROCEDURE 1094.5 SUB (A) A PERSON AGGRIEVED BY THE RULING OF AN ADMINISTRATIVE AGENCY MAY FILE A PETITION FOR A WRIT OF ADMINISTRATIVE MANDAMUS TO INVALIDATE THAT RULING (B) A WRIT WILL ISSUE IF THE AGENCY HAS COMMITTED A PREJUDICIAL ABUSE OF DISCRETION. ABUSE OF DISCRETION IS ESTABLISHED IF THE RESPONDENT HAS NOT PROCEEDED IN THE MANNER REQUIRED BY LAW, THE ORDER OR DECISION IS NOT SUPPORTED BY THE FINDINGS, OR THE FINDING ARE NOT SUPPORTED BY THE EVIDENCE (App. A pg. 12-13)

- STATE PROCEEDINGS

- GONZALES ARGUE THAT THE BOARD GAVE NO BINDING EFFECTS TO THE NINTH CIRCUIT FINDINGS SINCE THE TRIAL RECORD WAS THE TOTAL RECORD AND THE STATEMENT WAS CONSIDER BY THE NINTH CIRCUIT. THE COURT RULED THE BOARD DID GIVE BINDING EFFECT TO THE NINTH CIRCUIT FINDING AND NO ABUSE OF DISCRETION WAS MADE (App. A 12)

- APPEAL

- GONZALES APPEALED THE TRIAL COURT DENIAL OF PETITION. THAT THE BOARD DID NOT TREAT NINTH CIRCUIT FACTUAL FINDING AS BINDING (App. A 18) GONZALES ARGUE THE NINTH CIRCUIT OPINION IS BINDING IN ORDER TO ENSURE CONSISTENCY BETWEEN THE RULING OF THE COURT AND THE BOARD. (App. A 25-26) BY CITING LARSEN (App. 6) AND MADRIBAI V. CALIFORNIA VICTIM COMP<sup>b</sup> GOVERNMENT CLAIMS Bd. (2016) 6 CAL. APP. 5<sup>th</sup> 1108. (App. A pg. 26) EVEN

BRINGING UP SENATE BILL NO. 446 (APP. A PG. 21) WHICH RESPONDENT STATES IT WAS NOT EXPRESS TO BE RETROACTIVE (APP. A PG. 15) BUT GONZALES ARGUE THE AMENDED STATUTE CAN GIVE CLARIFICATION TO (§4903 SUBD(B) 1485.5(C)(D)(E) (APP. A PG. 21)) OF THE BINDING EFFECTS. RESPONDENT TRIES TO ARGUE THE 6 FINDING DUE TO THE STATEMENT "WHERE YOU FROM" WAS NEW EVIDENCE AND NOT CONSIDER BY THE NINTH CIRCUIT. WHEN ALL THE EVIDENCE BEEN ARGUED AND THE ATTORNEY GENERAL ASSIGNED TO THE NINTH CIRCUIT HAD EVERY OPPORTUNITY TO CONTEST THE OPINION IN THE PETITION FOR REHEARING WHICH WAS DENIED (APP. D PG. 1-2)

\* THE COURT OF APPEALS AFFIRMED THE JUDGEMENT AND ISSUE A OPINION FOR PUBLICATION (APP. A). GONZALES PETITION FOR REVIEW IN THE CALIFORNIA SUPREME COURT WAS DENIED (APP. B)

## REASON FOR GRANTING THE WRIT

1. TO PROVIDE CONSISTENCY BETWEEN FEDERAL COURT HABEAS CORPUS OPINION'S ON STATE PROCEDURE THAT MAKE IT BINDING. TO NOT ALLOW FOR A PIECE OF EVIDENCE TO BE CALLED "NEW EVIDENCE" AND WAS NOT CONSIDERED BY THE FEDERAL COURT. WHEN IN FACT IT WAS IN THE RECORD AND CONSIDERED

- THIS COURT HAS RULED THAT SCHEMES LIKE THE CALIFORNIA VICTIM COMPENSATION BOARD HAS VIOLATE DUE PROCESS (NEILON V. COLORADO 581 U.S. 128) EVEN THOUGH IT WAS RULED DUE TO REGAINING FUNDS, JUSTICE ALITO CONCURRING OPINION, TALKS ABOUT THE COMPENSATION.

- THE PEOPLE SUBMITTED A ENHANCED AUDIO RECORDING CLEARING A "INAUDIBLE" THAT WAS PART OF THE TRIAL RECORD. WHERE GONZALES ADMIT ASKING THE MEN ON THE STREET CORNER "WHERE ARE YU FOLKS FROM" (APP. A PG. 9) BY USING THE PREPONDERANCE OF THE EVIDENCE STANDARD, THE BOARD AND THE LOWER COURTS STATED THIS IS NEW EVIDENCE AND WAS NOT CONSIDERED BY THE NINTH CIRCUIT (APP. A PG. 16, 23, 24, 25, 29, 30, 34)

- WHERE YU FOLKS FROM STATEMENT

- THE COURT OF APPEAL IGNORES IT WAS IN THE RECORD AND CONSIDERED DUE TO CALIFORNIA LAW. GONZALES SUBMIT THE ATTORNEY GENERAL SUPPLEMENTAL BRIEF IN THE NINTH CIRCUIT (APPENDIX E) I RESPECTFULLY ASK THE COURT TO GO TO (APP E PG. 34 AND 45) THE TOP CORNER NUMBERS AND SEE IT WAS IN THE RECORD AND CONSIDERED BY THE NINTH CIRCUIT. ALSO THE COURT OF APPEALS REFEREME TO THE EXCHANGING OF WORD WITH THE MEN ON THE STREET CORNER (APP. A PG. 24) BUT IGNORES THE DISSENT OF THE NINTH CIRCUIT (APP. C PG. 11-12) SHOWING THE EXCHANGING OF WORDS WAS CONSIDER. THE COURT OF APPEAL GAVE NO MIND TO THE NINTH CIRCUIT OPINION EVEN NOT CITING THE CORRECT CASE AND 6 REASON (APP. A PG. 7-8)

• I RESPECTFULLY ASK THIS COURT TO SEE IT WAS NOT NEW EVIDENCE AND IT WAS CONSIDERED FOR STATE PROCEDURE TO CREATE NEW EVIDENCE WHEN ITS NOT, JUST TO CHANGE A FEDERAL COURTS OPINION IN SOMEWAY VIOLATE DUE PROCESS. AN EXAMPLE, A SURVEILLANCE VIDEO IS SUBMITTED IN THE RECORD AND CONSIDERED BY THE FEDERAL COURT. THE VIDEO IS BLACK AND WHITE BUT THE EVIDENCE OF A COLOR OF CLOTHING ARE IN OTHER PARTS OF THE RECORD. THE COLOR OF THE CLOTHING OF THE DEFENDANT WAS RELEVANT TO THE CRIME BUT OTHER EVIDENCE WHERE IN FAVOR OF THE DEFENDANT GRANTING RELIEF. SEEKING COMPENSATION, THE ATTORNEY GENERAL SUBMITS A NEW VIDEO THIS TIME OF COLOR. STATING THIS NEW VIDEO IS NEW EVIDENCE AND NOW IT CAN NOT BE DISPUTED THE DEFENDANT WAS WEARING THE COLOR. IGNORING OTHER PARTS OF THE RECORD WHERE IT WAS SUBMITTED. BY USING THE PREPONDERANCE TO REWRITE THE OPINION. THIS IS WHY IN WINSHIP "THE PREPONDERANCE TEST IS SUSCEPTIBLE TO THE MISINTERPRETATION THAT CALLS ON TRIER OF FACTS" (IN RE WINSHIP 397 U.S. 358). CALIFORNIA HAS STATUTE IN ORDER TO BE CONSISTENT WITH COURTS GRANTING HABEAS § 1485.5 (C)(D)(E). IN THE HEARING § 4903 (B) (APP. E PG. 1-3). THE BOARD STATES IT MADE THE NINTH CIRCUIT FINDINGS BINDING BUT ADDED AND SUBTRACTED THE FINDING (APP. A PG. 7-8) TO (APP. C PG. 5-7)

1. TOOK OUT ONE WITNESS SAID GONZALES DID NOT GIVE HIM THE "WHATSUP" AND NOT THE SHOOTER. THEN TOOK OUT THE TWO WITNESS STATING GONZALES WAS NOT IN THE CAR THAT SHOT. (TRYS TO CLARIFIED WHAT WITNESS MEANT APP. A 4)  
2. TOOK OUT MANY PEOPLE ATTENDED THE PARTY MAYBE A 100 AND THE GANG AFFILIATION CANNOT CONSTITUTE GROUNDS FOR CONVICTION. (MAKING GONZALES THE ONLY PERSON ATTENDED THE PARTY)

3. TOOK OUT ALL WITNESS SAID IT WAS BLACK OR DARK COLOR VEHICLE. ALSO GONZALES STATES NO ONE FIRED A GUN IN THE CAR (ADDED CADILLAC AS THE MODEL OF THE BLACK CAR. WHEN IT WAS NOT IN THE RECORD)

4. TOOK OUT NUMEROUS CARS PASSED THE VICTIM BEFORE SHOOTING AND GONZALES DENIED SAYING ANYTHING.

5. TOOK OUT 12 HOURS AFTER THE SHOOTING GSR TEST WAS APPLIED AND PROSECUTION: P EXPERT EXPRESSED SURPRISE PARTICLES SURVIVED WOULD EXPECT 12 HOURS TO REMOVE ALL THE PARTICLES.

• NOT CONSISTENT WITH THE OPINION, INSTEAD THE COURT OF APPEALS STATES IT DID (APP. A 27-30) GONZALES RELYS ON LARSEN (APP. G) EVEN THOUGH LARSEN WAS GRANTED DUE TO 1485 SS(A). IT TALKS ABOUT THE OTHER STATUTE (APP. G PG. 10). THEN THE CONSISTENCY WITH MADRUGAI (APP. G PG. 15) (APP. A 26-27) THE COURT OF APPEALS TRIES TO DEFINE THE STATUTES (APP. A PG. 22-23) DUE TO NOT KNOWING WHAT IS BINDING THE COMMENTS OF WEAK RECORD (APP. A PG. 24) OR THE OPINION.

GONZALES REFER TO THE AMENDED STATUTE FOR CLARIFICATION (APP. F 4-7) DUE TO THE COURT OF THE APPEALS NOT KNOWING THE TRUE MEANING. IT WAS NOT CONSIDER BECAUSE OF NOT EXPRESS RETROACTIVE. THE COURT IGNORES WHAT IT SAYS IN BURKS

"IT SHOULD MAKE NO DIFFERENCE THAT THE REVIEWING COURT, RATHER THAN THE TRIAL COURT, DETERMINED THE EVIDENCE TO BE INSUFFICIENT" (BURKS V. U.S. 437 U.S. 1) GIVING NO EFFECTS TO THE REVIEWING COURT FINDINGS.

• IF THE EVIDENCE IS UP FOR DISCUSSION AFTER RELIEF. WHEN ALL THE EVIDENCE WAS IN TRIAL. THEN WHAT IS BINDING? WHAT IS THE BASIS OF THE FEDERAL HABEAS COURTS RULING? AND ARE OPINIONS OF FEDERAL COURTS JUST SUMMARY AND COMMENTARY? MOST IMPORTANT ARE COMPENSATION PROCEEDING

IN FAVOR FOR CLAIMANT'S TO RESTORE THERE LIVES OR FOR ATTORNEY GENERAL TO GET ANOTHER OPPORTUNITY TO QUESTION THE PRESUMPTION OF INNOCENCE AT A LOWER STANDARD, WHEN THE PETITION FOR REHEARING WAS DENIED (APP. D Pg. 1-2). I RESPECTFUL ASK THIS COURT TO DEFINE THE BINDING AND BASIS OF THE STATUTE.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Justina Gargallo

Date: 7-6-24