24-6534

No. _____

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

KEITH ROBERT LUGO — PETITIONER
(Your Name)

vs.

R. FISHER, WARDEN AT VALLEY STATE PRISON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT FOR THE STATE OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KEITH ROBERT LUGO
(Your Name)

P.O. Box 96 Fb; C1-10-4 Low
(Address)

Chowchilla, CA 93610
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

1. THE QUESTION OF WHETHER THIS HIGH COURT'S RECENT RULING OVERTURNING THE CHEVRON DOCTRINE, AS ANNOUNCED IN LOPER BRIGHT ENTERPRISES V. RAIMONDO, NO. 22-251[2024], AND RELENTLESS V. DEPARTMENT OF COMMERCE, NO. 22-1219 [JUNE 28, 2024], IS MANDATORY AUTHORITY ON THE CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATIONS AND DISPOSES OF THE "HIGHLY DEFERENTIAL" STANDARD OF IN RE LAWRENCE, 44 CAL.4TH 1181 [2008]; AND, IF SO, DID THE VIOLATION OF THE SUPREMACY CLAUSE OF ARTICLE VI TO THE UNITED STATES CONSTITUTION ALSO ILLEGALLY DEPRIVE PETITIONER OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW; REQUIRING REVERSAL

A. WHETHER PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW, VIOLATIVE OF CONSTITUTIONAL AMENDMENTS 5, 9, AND 14, AS A JUVENILE OFFENDER BY ILLEGALLY AND PREJUDICIALLY APPLYING THE OVERTURNED CHEVRON DOCTRINE, IN VIOLATION OF PENAL CODE SECTION 4801[c].

B. WHETHER PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW, VIOLATIVE OF CONSTITUTIONAL AMENDMENTS 5, 9, 14, AS AN ELDERLY OFFENDER BY ILLEGALLY AND PREJUDICIALLY APPLYING THE OVERTURNED CHEVRON DOCTRINE, IN VIOLATION OF PENAL CODE SECTION 3055 [c].

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Keith Robert Lugo,
Petitioner,

v.

R. Fisher, Warden at Valley State Prison,
Respondent.

PETITION FOR WRIT OF CERTIORARI

From the California State Supreme Court

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES, TO THE HONORABLE CHIEF JUSTICE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT FOR THE UNITED STATES OF AMERICA

Petitioner, Keith Robert Lugo, In Persona Pro Se, respectfully prays that a certiorari issue to review the judgment of the State Supreme Court for the State of California, entered on 11/26/24.

OPINION BELOW

On 11/26/24, Case No. S286003, the Supreme Court for the State of California entered its decision to deny petitioner's Petition for Writ of Habeas Corpus filed with that Court pursuant to PC 1473. A copy of that decision is attached hereto as Appendix C. Petitioner did not file for reconsideration, in that the Court denied En Banc. Petitioner did not file a petition for writ habeas corpus in the appellate court.

On 3/20/24, Petitioner submitted a Petition for Writ of Habeas Corpus to the Superior Court for the County of San Diego, CA. That Court denied the Petition. Due to loss during a search, petitioner no longer has a copy of that decision, case number unknown.

JURISDICTION

On 11/26, Case No. S286003, the Supreme Court for the State of California denied petitioner's Original Petition for Writ of Habeas Corpus, pursuant to the provisions under PC 1473. The jurisdiction of this Court is invoked pursuant

to the provisions of 28 U.S.C. 1254[1]. This petition is filed within a timely fashion as it is submitted within ninety days of the date of denial of the Petition for Writ of Habeas Corpus as provided in Rule 13[3], Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part as follows:

> No person shall be...deprived of life, liberty or property without due process of law...

The Ninth Amendment to the United States Constitution provides in pertinent part as follow:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

> No State shall...deprive any person of life, liberty...without due process of law; nor deny any person within the jurisdiction the equal protection of the law.

Article VI to the United States Constitution provides in pertinent part as follows:

> This Constitution...shall be the supreme Law of the Land.

The provisions of PC 1473, in effect at the time that petitioner filed his petition for writ of habeas corpus in the State Supreme Court on 7-9-24, are set forth in full in Appendix D to this petition.

The provisions of Title 28, Section 2254, in effect at the time petitioner filed his petition for writ of habeas corpus in the State Supreme Court on 7-9-24, are set forth in full in Appendix E to this petition.

STATEMENT OF THE CASE

On November 8, 2023, the Board of Prison Terms conducted Petitioner's second subsequent parole hearing. The Board denied petitioner a parole date on this same day. [See Exhibit Electronically filed and lodged with the Supreme Court for the State of California].

What do you, why do you think that you were involved with that and what did it do for you? Well originally it was simply a money scheme to get involved in and after it was power and money and control over other people. And to live the life that I thought I deserved at the expense of everybody else, selfishly and greedily [P.H.T. 13-14]. The more money I got the deeper I got, the darker I got. I trapped myself with my own arrogance.

Petitioner is currently in Bible correspondence school, taking college classes, and maintains a job in the kitchen. [P.H.T. 23]. Petitioner has attempted to build a career for a future with his wife as a professional, award-winning novelist, stretching over several genres. When I first wrote the books they were written a very long time ago. Some of them is up, up to 30 years ago, 25 years ago and it just got around to publish them. [P.H.T. 23-24]. The first novel was published approximately 17-18 years ago as Fantasy. The previous Board had determined that Petitioner was clear of wrongdoing. The last book you wrote was a couple of years ago and that's already out and published, this romance novel. Yes I wrote it probably was working on it and yes four or five years, took about two years to write. [P.H.T. 42-43].

Okay. All right. Okay. So looking at your disciplinary history,

"P.H.T." refers to Parole Hearing Transcript, followed by page number.

you've got two rule violations in your entire term. Um, they're both, um, pretty, um, old at this point, uh, November 2007, um, uh, unauthorized use of a copy machine and 1994 battery on an inmate. [P.H.T. 49]. All right. So how, how do you think you've managed to remain disciplinary free? I caused so much damage. I've hurt so many people. it's, I did not want to be that person anymore so I moved away. I don't get involved in any of the stuff. I do what I'm supposed to do. I don't do what I'm not supposed to do. And I'm trying to be, to be responsible to avoid all the negative, to avoid what led me into my life of crime. And I just changed my life around. [P.H.T. 51]. Petitioner has attended and completed numerous self-help groups: Houses of Healing; SHARP; Realize 1 & 2; N/A; Anger Management; GOGI; numerous PREP correspondence plans and several book reports. What have you done to address your involvement with gangs? I don't need to be around people to get their validation and I obtain it from within myself. No more seeking, no more accolades, no more being part of a group or trying to fit in as far as that goes. It's more of a productive approach to life. [P.H.T. 66]. A similar thing as even when I was approached when I was still on the mainline is like I told them I'm not, I don't want a part of it. I'm not going to be a part of it. If they wanted to come over and attack me then they could attack me. But there was no force on earth it was going to make me be part of any kind of crimes or hurting people or getting involved in criminal activity. And it would be the same thing as if the street in an environiment like I'm not going to get involved. And if need be, I would report it to the local authorities. [P.H.T. 67]. Contrary to the claim made

by the Board, Petitioner submitted as the, previous board said volumes and materials in the last hearing...they said it was too much for them to all read because it was hundreds of pages. And so that's why when I sent this, this was like an addendum to all that was already previously submitted rather than resubmit it because I did not want to assume to be presumptuous by reiterating stuff that had already been submitted. [P.H.T. 76]. I'm a changed man. I'm not the same person I used to be. I, uh, participated in all the self-help groups. I've changed, my reflect, my history and everything else like I don't do anything wrong. It's by design and choice and the person that committed these crimes and did just terrible things and sold drugs. He died a very long time ago. And even trying to sit there and get into the head of a 19, 20 year old kid in my age isn't really so easy. And it is, you know, you try to sit and think what, why do kids do what they do? And, um, I'm just not the same person. [P.H.T. 81]. Petitioner's involvement in the criminal lifestyle was over forty years ago, when still a teenager. Much of the Board's focus dates back to the events of 1986, a very long time ago indeed.

The question facing this Court, other than the deliberate application of a "Highly Deferential" standard struck down by this Court as wholly unlawful, is whether the congressional legislation at the state level of the juvenile and elderly standards intended to incarcerate a juvenile with a disciplinary hidtory as sparce as the one presented in this case, and then continue that same incarceration into the years of senior citizenship only to use the passage of time and age as a means to deny parole repeatedly. Memory will not improve.

REASONS FOR GRANTING THE WRIT

THE QUESTION OF WHETHER THIS HIGH COURT'S RECENT RULING OVERTURNING THE CHEVRON DOCTRINE, AS ANNOUNCED IN LOPER BRIGHT ENTERPRISES V. RAIMONDO, NO. 22-251 [2024], AND RELENTLESS V. DEPARTMENT OF COMMERCE, NO. 22-1219 [JUNE 28, 2024], IS MANDATORY AUTHORITY ON THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION AND DISPOSES OF THE HIGHLY DEFERENTIAL STANDARD OF IN RE LAWRENCE 44 CAL.4TH 1181 [2008]; AND, IF SO, DID THE VIOLATION OF THE SUPREMACY CLAUSE OF ARTICLE VI TO THE U.S. CONSTITUTION ALSO ILLEGALLY DEPRIVE PETITIONER OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW: REQUIRING REVERSAL

The recent decision handed down by the United States Supreme Court in Loper Bright Enterprises v. Raimondo, No. 22-451, held that the Administrative Procedures Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to agency interpretation of law simply because the statute is ambiguous; Chevron v. Natural Resources Defense Council, 467 U.S. 837 [1984], is overrule.

On June 28, 2024, this Court cut back sharply on the power of federal agencies to interpret the laws they administer and ruled that courts should rely on their own interpretations of ambiguous laws. This Court overruled its 1984 landmark decision in Chevron, infra, which gave rise to the doctrine known as the Chevron Doctrine. Under that doctrine, if Congress has not directly addressed the question at the center of the dispute, a court was required to uphold the agency's interpretation of the statute as long as it was reasonable. see also, Relentless v. Department of Commerce, No. 22-1219 [June 28, 2024]. In this Court regarding the Chevron deference, Justice Roberts explained in his opinion for the Court that the issue of deference is inconsistent with the Administration

Procedures Act, which the court must decide legal questions by applying their own judgment.[cf. Cal.Gov.Code, section 11340.5]

In the instant case now presented to this Court, the Superior Court for the County of San Diego, which the California Supreme Court adopted En Banc in its summary denial for habeas relief, denied petitioner's Petition for Writ of Habeas Corpus on the basis of the "Highly Deferential" standard articulated under the decision of In re Lawrence, 44 Cal.4th 1181 [2008], without the issuance of an order to show cause or holding an evidentiary hearing. A blanketed standard of a "Highly Deferential" standard surrender to the whimsical determination of the Board of Prison Terms, a hearing conducted by members who admittedly did not review all materials submitted by petitioner in support of parole, including recognition of a psychological assessment the previous Board claimed to be riddled with errors, to deny parole without a hint of "current dangerousness" must be viewed as an illegal act when weighed under the recent decision of this Court, which is made applicable to the States under the due process clause of the Fourteenth Amendment of the United States Constitution.

The APA makes it clear that agency interpretations of statutes, like interpretations of the Constitution, are not entitled to a deference standard. Under the APA, it thus remains the responsibility of the courts to decide whether the law means what the agency means. Even when those ambiguities involve technical or scientific questions that fall within the agency's area of expertise, "Congress expects courts to handle technical statutory questions--and courts also have the benefit of briefing from the parties and friends of

the court.

Nothing in the record supports a deferential surrender to the Board of Prison Terms and its capricious denial of parole on the unsupported assertion that petitioner somehow poses a current threat of dangerousness. cf. In re Shaputis, 53 Cal.4th, 192, 222 [2011]: [Shaputis II], which also falls under the overrule standard duly announced by this Court in Loper and Relentless, in violation of Article VI, clause 2 of the U.S. Constitution and the Separation of Powers Doctrine. [cf. Cal.Gov.Code, section 11351.6]

a. Whether petitioner was denied due process of law and equal protection of the law under the state and federal constitutions as a juvenile offender by illegally applying the overturned provisions of the Chevron Doctrine, in violation of Penal Code section 4801[c] and SB 261.

Penal Code section 4801[c], directs, "When a prisoner committed his or her controlling offense prior to attaining 23 years of age, the Board SHALL give "great weight" to the diminished culpability of juveniles as compared to adults. Miller v. Alabama [2012] 183 L.Ed. 2d 407, specifically found that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior, and that developments in psychology and brain sciences continue to show fundamental differences between juveniles and adult minds. People v. Caballero, 55 Cal.4th 262 [2012], and the decision rendered by this Court in Graham v. Florida 560 U.S. 48 [2010].

The legislature recognized that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological develpment occurs, these individuals can be contributing members of society. In re

Palmer, 10 Cal.5th 959; see also Roper, 543 U.S. at 570; Eddings, 455 U.S. at 115-116. In the instant case, the Board failed to apply the mandatory "Great Weight" in its determination as to suitability of parole; instead, the Board inexplicably misplaced the juvenile standard of "Great Weight" to the number of years in its denial, an application that does not apply in any legal authority whatsoever and constitutes a misapplication of federal law, including contrary to federal law as determined by the U.S. Supreme Court.

In re Perez, 7 Cal.App. 5th 65, determined that whether a new panel had the right to find Petitioner's version of events implausible after the previous panel did not find so, his version was not implausible. Lugo's situation mirrors that of Perez. The court considers whether there is a rational nexus between the evidence and the ultimate determinations of current dangerousness. In re Hunter, 205 Cal.App. 4th 1529. Such is now present, in that the Board not only overreached into an area previously reconciled to the satisfaction of the previous panel, which declared that it was hearing the truth and attached mitigating factors to stamp a seal of approval, but also altered the facts when the truth that it had not read the full record of materials submitted by petitioner in support of parole. Without legitimate cause, the Board then arbitrarily removed all the mitigating factors the previous Board had awarded for the list of positive programming done as proof of suitability. In re Roderick, 154 Cal.App.4th 242 [2007]; compare Senate Bill 261. The Board has in fact elevated petitioner's sentence to one of Life without the possibility of parole. His history of discipline is nearly non-existent.

b. Whether petitioner was denied due process and equal protection of the law under the state and federal constitutions as an elderly offender by illegally applying the overturned Chevron Doctrine, in violation of Penal Code section 3055[c], and failing to apply the standard as required by law

In the case of elderly inmates, the Board must give special consideration to whether age, time served, and diminished condition in physical aspects, if any, have reduced the elderly inmate's risk for future violence. Section 3055[c]; see also In re Van Houten, 92 Cal.App.4th 548-549, reasoned, "We have to question whether anyone can fully comprehend the myriad of circumstances, feelings, and current historical forces that motivates conduct, let alone past misconduct. Additionally, we question whether anyone can adequately articulate the complexity and consequences of past misconduct and atone for it to the satisfaction of everyone." In re Van Houten, infra. The same situation surfaced in this case during the hearing.

Where undisputed evidence shows that an inmate has acknowledged the material aspects of his or her conduct, shown to understand its cause, and demonstrated remorse, the mere refusal by the Board of Prison Hearings to accept such evidence is not itself a rational or sufficient basis upon which to conclude that the inmate lacks insight, let alone that he or she remains currently dangerous. In re Hunter, 205 Cal.App.4th 1529; In re Hoze, 61 Cal.App.5th 309.

The Court In re Pugh, 205 Cal.App.4th 260, found an inmate's refusal to agree with the prosecution's version of events of the crime does not support a "lack" of insight. In re Palermo, 171 Cal.App.4th 1096, 1110-1112 [2009]. The older a prisoner becomes the more finer details of the crimes and the recklessness of

immaturity attached to the Hallmarks of Youth fade, eventually vanishing, where factors of psychological causation are suspect due to the passage of time and age. Simply stated, even if one excluded the provisions defining the underdeveloped brain of a youth as it pertains to neuroscience, the passage of several decades into the elderly years necessarily retires the ability of a senior citizen to think as a juvenile. Petitioner was 21 years old at the time of the crime, and is now 59 years old, designated as a first term offender, with virtually no history of disciplinary action. In essence, despite of three and a half decades of positive programming, contrary to the actual sentence rendered by the court of a 1986 case, petitioner is serving a sentence of life without the possibility of parole. The average life expectancy of a human male is approximately 72 years. In re Perez, 7 Cal.App.5th 65. The nexus to current dangerousness is critical, a reviewing court focuses upon some evidence supporting the core statutorily determination that a prisoner remains a current threat to public safety--not merely some evidence supporting the Board's or the Governor's characterization of facts contained in the record.

Petitioner qualifies as both a juvenile and elderly offender,, neither of which was applied correctly under state or federal law.

For some inexplicable reason, which the courts failed to review under the now abolished Chevron Doctrine, in violation of petitioner's rights, the Board of Prison Terms did not consider that petitioner qualified as an elderly offender. Instead, the Board focused on immaterial issues the previous Board had fully concluded as non-starters, that petitioner had done nothing wrong,

that the issues did not have anything to do with dangerousness. The implication is that the written materials created by the petitioner as an award-winning novelist are both harmless and lawful. Therefore, petitioner's rights were violated under the elderly standard within the meaning of section 3041[a]. Criminal history did not indicate current dangerousness. [U.S. Const., 14th Amend. Cal. Const. Amend, Art. 1, section 7, Cal.Code Reg. section 2402[c][1]. Denial of habeas petition was reversed because California prisoner had a liberty interest in parole under Pen.C section 3041[b], and the Governor violated the inmate's due process rights on the stale and static factor of the committed offense. [Hayward v. Marshall, 512 F.3d 536 [9th Cir. 2008].

CONCLUSION

For the foregoing reasons, petitioner respectfully prays that a writ of certiorari issue to review judgment of the Supreme Court for the State of California.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: 1/4/25

Respectfully submitted,

KEITH ROBERT LUGO
In Persona Pro Se