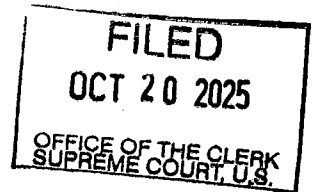


No. 25-570

ORIGINAL

In the
Supreme Court of the United States



DAMON B. COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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October 20, 2025

QUESTIONS PROPERLY PRESENTED FOR REVIEW

1. Whether the Ninth Circuit Court of Appeals Abused its discretion in denying Petitioner Damon Cook's timely motion to recall the mandate and to reinstate the appeal to prevent an injustice or to stop a miscarriage of justice?

See Calderon v. Thompson, 523 U.S. 538, 550 (1998); *See Hawaii Housing Authority v. Midkiff*, 463 U.S. 1323, 1324 (1983); *See Ryan v. Schad*, 570 U.S. 521, 523-525, 528 (2013); *See McQuiggin v. Perkins*, 569 U.S. 383, 393 (2013).

2. Whether the Ninth Circuit Court of Appeal's Decision denying petitioner Damon Cook's timely motion to recall the mandate and to reinstate the appeal was an abused of discretion to prevent an injustice or to stop a miscarriage of justice?

See Hawaii Housing Authority v. Midkiff, 463 U.S. 1323, 1324 (1983); *See Calderon v. Thompson*, 523 U.S. 538, 550 (1998); *See Ryan v. Schad*, 570 U.S. 521, 523-525, 528 (2013); *See McQuiggin v. Perkins*, 569 U.S. 383, 393 (2013); *See FBI v. Fikre*, 601 U.S. 234, 240 (2024).

3. Whether the Ninth Circuit abused its discretion when it neglected to issue its mandate in a timely manner pursuant to *Ryan v. Schad*, 570 U.S. 521, 523-525, 528 (2013)?

4. Whether the Ninth Circuit abused its discretion for failing to reinstate his appeal under *Meyers v. Birdsong*, 83 F.4th 1157, 1159 (9th Cir. 2023)?

LIST OF PROCEEDINGS

U.S. Court of Appeals, Ninth Circuit

No. 25-2290

Damon Balar Cook, *Petitioner-Appellant*, v.

George M. Galaza, Warden, *Respondent-Appellee*

Final Order: April 17, 2025

Reconsideration Denial: July 21, 2025

U.S. District Court, C.D. California

No. CV-00-08569

Damon Balar Cook, *Petitioner*, v.

George M. Galaza, Warden, *Respondent*

Final Order: January 17, 2024

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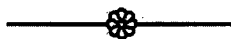
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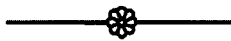
OPINIONS BELOW

The order of the U.S. Court of Appeals for the Ninth Circuit was entered on April 17, 2025. (App.1a). The order of the U.S. District Court, C.D. California was entered on January 17, 2024. (App.2a).



JURISDICTION

The Ninth Circuit denied reconsideration on July 21, 2025. (App.5a). This Court has jurisdiction under 28 U.S.C. § 1254(1).



STATEMENT OF THE CASE

Timely Motion to Recall the Mandate and to Reinstate the Appeal to be Heard on its True Merits.

Good cause and unusual circumstances appear on the face of the whole entire record of litigation in this case in trying to get petitioner Damon Cook's insufficiency of the evidence of force claim heard by the Courts.

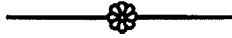
This motion to recall the mandate is to prevent an injustice or to stop a miscarriage of justice. *See Zipfel v. Halliburton Co.*, 861 F.2d 565, 567-568 (9th Cir. 1988); *See Meyers v. Birdsong*, 83 F.4th 1157, 1159 (9th Cir. 2023)—Reinstate the Appeal; *See Thompson* 120 F.3d 1045, 1048, 1051; *See Verrilli v. City of Concord*, 557 F.2d 664, 665 (9th Cir. 1977); *See Carrington v. United States*, 503 F.3d 888, 891, 897 (9th Cir. 2007).

Because petitioner Damon Cook is being held in unlawful state custody in violation of the Fourteenth Amendment of the United States Constitution on the ground of insufficient evidence of force in this case. And pursuant to this Court's precedent of *Juan v. Allen*, 408 F.3d 1262, 1274-1275, 1279 (9th Cir. 2005). See *Diaz v. Baca*, 203 Fed. Appx. 884, 885 (9th Cir. 2006); See *Fiore v. White*, 531 U.S. 225, 228-229 (2001).

Because the prosecution in this case failed to establish petitioner Damon Cook's guilt beyond a reasonable doubt. And

The record evidence in this case also fails to establish proof of guilt beyond a reasonable doubt which the state court of appeal rejected appellant Damon Cook's insufficiency of the evidence of force claim which represent an unreasonable application of *Jackson v. Virginia* and represents an unreasonable application of *In Re Winship*. See *Scott v. Garcia*, 584 Fed. Appx. 726, 727 (9th Cir. 2014); See *Renico v. Lett*, 559 U.S. 766, 773 (2010).

For these reasons, petitioner Damon B. Cook must be set free and released from unlawful restraint of his liberty (freedom) under this Court's precedent of *Juan H. v. Allen*, 408 F.3d 1262, 1274-1275, 1279 (9th Cir. 2005).



REASONS FOR GRANTING THE PETITION

The Ninth Circuit had the Statutory authority to “Hear” and “Decide” this Rule 60(b)(4) motion appeal on its true merits with a new appellate case number 25-2290 pursuant to: *Duncan v. Bonta*, 131 F.4th 1019, 1024, 1025, 1026 (9th Cir. 2025). But failed to do so, “This was an abused of Discretion.”

The Ninth Circuit also “abused its discretion” when it neglected to issue its mandate in a timely manner pursuant to:

See Ryan v. Schad, 570 U.S. 521, 528 (2013); *See Manuel v. City of Joliet*, 580 U.S. 357, Fn.8 (2017); *See Klapprott v. United States* 335 U.S. 601, 604, 607-608, 609 (1949) (Rule 60(b) Relief) (1949); *See United Student Aid Funds, Inc. v. Espinosa* 559 U.S. 260, 271 (2010) (Rule 60(b)(4) (Thomas)); *See Blom Bank Sal v. Honickman*, 145 S.Ct. 1612 (2025), Rule 60(b)(6) Thomas/Jackson.

Federal Rule of Appellate Procedure 35(a)(1) request for an en banc reconsideration of the Rule 60(b)(4) motion to appeal to be heard on its true merits without further delay. *See Henry v. Ryan*, 766 F.3d 1059 (9th Cir. 2014). *See Juan H. v. Allen*, 408 F.3d 1262, 1274-1275, 1279 (9th Cir. 2005) Rule 35(a)(1).

Pursuant to Rule 60(b)(4) this case requires to be reopened because the 2002 federal district court’s judgment is “void” against Damon B. Cook. *See New York Life Ins. Co. v. Brown*, 84 F.3d 137, 143 (5th Cir. 1996).

Because pursuant to Rule 60(b)(4) petitioner Damon B. Cook was deprived of and prejudicially denied his opportunity to be heard on his insufficiency of the evidence of force claim by the Federal District Court's 2002 Judgment in Case No. 2:00CV-08569 RJK-MC.

The U.S. District Court judge and the U.S. Magistrate judge James W. McMahon did not address the insufficiency of the evidence of force claim and did not apply the relevant law of *Jackson v. Virginia*, 443 U.S. 307, 316, 318-319, 324 fn.16 (1979), and *In Re Winship*, 397 U.S. 358, 364, 365-368 (1970).

To the insufficiency of the evidence of force claim, see *Payne v. Borg*, 982 F.2d 335, 338 (9th Cir. 1992), 982 F.2d 335, 337-338. See *Weaver v. Foltz*, 888 F.2d 1097 (6th Cir. 1989)—The writ should be granted; See *Juan H. v. Allen*, 408 F.2d 1262, 1274-1275, 1279 (9th Cir. 2005); See *See Fiore v. White* (2001) 531 U.S. 225, 228-229; See *Kazas v. Woodford*, 436 Fed. Appx. 813, 814-815 (9th Cir. 2011); See 538 U.S. 835, 840.

We will Grant Habeas relief if the state court's decision is unreasonable. See *Kelly v. Roberts* 998 F.2d 802, Fn.11 (10th Cir. 1993) 10 years; See *Renico v. Lett*, 559 U.S. 766, 773 (2010) Habeas relief granted; See 408 F.3d at 1274-1275, 1279. Free Damon B. Cook because there was no substantial evidence of force in this case. Affirmance of petitioner Damon B. Cook's convictions by the state court of appeal rejecting appellant Damon B. Cook's insufficiency of the evidence of force claim without addressing it first and without applying the relevant law to the insufficiency of the evidence of force claim was an unreasonable application of *Jackson v. Virginia* and was an unreasonable application of *In Re Winship*, 397 U.S. 358 (1970), that warrants federal habeas corpus relief. See *Taylor v.*

Maddox, 366 F.3d 992 (9th Cir. 2004) (Same district court judge) (reversed).

This case should be reopened and the 2002 Federal district court's judgment should be declared "void" by this court of appeals under Federal Rule of Civil Procedure 60(b)(4) because petitioner Damon B. Cook was deprived of and prejudicially denied his opportunity to be heard by the 2002 Federal district court's judgment on his insufficiency of the evidence of force claim. Due process of law to be heard. *See* 339 U.S. 306, 313-314, 380 U.S. 545, 552*; *See United Student Aid Funds, Inc. v. Espinosa* 559 U.S. 260, 270, 271 (2010); *See* 510 F.3d at 1076-1077.

This case should be reopen and consideration in light of the following cases: *See People v. Griffin*, 33 Cal.4th 1012, 1028-1029 (2004); *See People v. Guido* 125 CA 4th 566, 574-576 (2005); *See People v. Brown* 11 CA 5th 332, 342 (2017); *Trejo v. Bondi*, No. 23-1412 (1st Cir. Aug. 29, 2025).

Respectfully submitted,

/s/ Damon B. Cook

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<i>Free Damon B. Cook</i> <i>(without further delay)</i> <i>Equal Protection of the Law</i> <i>Under the 14th Amendment.</i>
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