

1 Shawn Rodriguez V16387
California Men’s Colony
2 P.O. Box 8103
3 San Luis Obispo, CA 93409
4

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 IN AND FOR THE COUNTY OF PLACER
7

8
9 In re SHAWN RODRIGUEZ,) Sup. Ct. Case No. 62-34689
10)
11)
12) **PETITION FOR WRIT OF HABEAS**
13) **CORPUS AND MEMORANDUM OF**
14) **POINTS AND AUTHORITIES**
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On Habeas Corpus.

16 **COMES NOW** Shawn Rodriguez (“Petitioner”) herein asserting that his conviction and
17 sentence violates the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution in that
18 it is based in material part on false evidence within the meaning of newly-amended California Penal
19 Code Section 1473(b)(3)(A).
20

21 As the California Legislature has changed the standard by which courts must review substantiated
22 claims regarding the introduction of false evidence at trial, and as the laws on aiding and abetting liability
23 have changed, a prima facie case is herein made for the relief requested. (Senate Bill 1134, see also
24 *In re Rogers* (2019) 7 Cal.5th 817, *In re Richards* (2016) 63 Cal.4th 291, *In re Reno* (2012) 55 Cal.4th
25 428; *Hicks v. Oklahoma* (1980) 447 U.S. 343, *Napue v. Illinois* (1959) 360 U.S. 264, and *Giminez v*
26 *Ochoa*, 821 F.3d 136 (9th Cir. 2016).)
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1 On or about July 6, 2022, attorney Marc Eric Norton, in reviewing Petitioner’s case for potential
2 representation at a future parole hearing, discovered that Nicholas Hamman was in custody in Sacramento
3 County Jail on charges of violating conditions of parole and for arson. As the file contains evidence that
4 Hamman, the alleged victim and main witness at Petitioner’s trial, had written post-conviction letters to
5 the Office of Attorney General in 2015 attempting to exonerate Petitioner, Marc Eric Norton interviewed
6 Nicholas Hamman on July 31, 2022, at the Sacramento County Jail. In a sworn declaration, Marc Eric
7 Norton declares that Hamman affirmed that he was the victim of a crime in 2003 and that “he falsely
8 testified at the trial of Shawn Rodriguez.” (See Exhibit A, *Declaration of Marc Eric Norton.*) Nicholas
9 Hamman further stated that “Anna Rugg was the mastermind, not Shawn”, and when asked why he had
10 perjured himself at Petitioner’s trial, replied, “I don’t know.”
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13 As counsel was aware that the file contained a previous habeas corpus challenge that was
14 reviewed under then-existing law pertaining to “newly discovered evidence”, and as part of that file
15 contained post-conviction juror statements, counsel also located and contacted several of these jurors, to
16 and including juror Louis Daggett, who affirmed post-conviction statements that the jury in the case was
17 confused by the instructions and that, if called to testify, would affirm that she would not have voted to
18 convict Petitioner had she known that victim Nicholas Hamman perjured himself at trial.
19

20 “ ‘A writ of habeas corpus may be prosecuted’ where ‘[f]alse evidence that is substantially
21 material or probative on the issue of guilt or punishment was introduced against a person at a hearing
22 or trial relating to his or her incarceration.’ (§ 1473, subd. (b)(1).)” (*In re Figueroa* (2018) 4 Cal.5th
23 576, 588, 229 Cal.Rptr.3d 673, 412 P.3d 356.) A petitioner bears the burden of proving, “ ‘ “by a
24 preponderance of the evidence, facts that establish a basis for relief on habeas corpus.” ’ ” (See, e.g.,
25 *In re Friend* (2021) 11 Cal.5th 720, *In re Cox* (2003) 30 Cal.4th 974.)
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1 California Office of Attorney General and prosecutors from the County of Placer sought in 2015 to
2 minimize this verified, documented evidence that Nicholas Hamman lied at trial by conceding the fact
3 that Hamman lied but that this did not “unerringly” point to Petitioner being wrongfully convicted or
4 innocent, this by parsing snippets of Hamman’s statements, i.e., that the issue of how high the water
5 rose did not point unerringly to Petitioner’s innocence, this while ignoring the undisputed fact that a
6 jury was lied to in a case that resulted in a sentence of imprisonment for life.

8 Upon habeas corpus review in 2015, wherein the *prosecutor’s office* (as opposed to a court
9 appointed referee) interviewed Nicholas Hamman, the trial court under a then-existing standard of
10 review denied habeas corpus relief. The law, however, has changed since Petitioner first filed his
11 petition in regards to both the standard by which courts must review evidence of false testimony at trial
12 and in regards to jury instructions on aiding and abetting liability. As Hamman is now in custody in
13 Sacramento County Jail, and as he has declared that he committed perjury at Petitioner’s trial, a referee

15 Prior to January 1, 2017, in order to grant habeas relief, the reviewing court needed to find that
16 the “new evidence” *completely* undermined the prosecution’s case and pointed “ ‘ *unerringly* to
17 innocence.” ’ ” (*In re Johnson* (1998) 18 Cal.4th 447, 462.) Although the court in 2015 found the new
18 evidence compelling, and though none of the parties disputed that false testimony was provided to
19 Petitioner’s jury, the trial court found that “There is no reasonable probability that even one juror would
20 render a contrary verdict upon a retrial.” (See Exhibit B, *Order Denying Habeas Corpus Relief*.) As
21 the jury questionnaires dispute the 2015 findings of the court, and as the law *now* holds that where
22 “New evidence exists that is credible, material, presented without substantial delay, and of such
23 decisive force and value that it *would have more likely than not* changed the outcome at trial”, an order
24 to show cause and the conducting of an evidentiary hearing is required. (Penal Code § 1473(b)(3)(A).)
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26
27 (emphasis added).
28

PROCEDURAL HISTORY

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2 In 2003, Petitioner was convicted of kidnapping for extortion, conspiracy to commit murder,
3 vehicle theft, and two counts of using another's name to obtain credit or property. On December 5,
4 2003, Petitioner was sentenced to 25 years to life in prison.¹

5
6 On July 24, 2015, Petitioner filed in the Superior Court of Placer County a petition for writ of
7 habeas corpus based on the ground that he stands wrongfully convicted and that said conviction was
8 based in material part upon false evidence introduced at trial. The court found a prima facie case for
9 the relief prayed for was established and issued an order to show cause.

10
11 Following briefing of the parties and the litigation of Petitioner's claim that the Public
12 Defender's office had failed to investigate the facts of the case nor properly prepared for an evidentiary
13 hearing, Petitioner invoked his *Faretta* rights (*Faretta v California* (1975) 422 U.S. 806). After the
14 Public Defender's office was re-appointed by the court, an evidentiary hearing was held on July 20,
15 2016, as to the issue of the presentation of false evidence at trial.

16
17 On September 9, 2016, the court denied habeas corpus relief by finding that "There is no
18 reasonable probability that even one juror would render a contrary verdict upon a retrial." (Exhibit C,
19 *Order Denying Habeas Corpus Relief*.)

20 **A. *Post-conviction Changes in the Law - Habeas Corpus Review***

21
22 On September 30, 2016, Governor Brown signed Senate Bill 1134, a Bill creating a viable
23 standard in California for using new evidence to prove wrongful convictions and actual innocence. The
24 previous California standard required that new evidence "points unerringly to innocence" and
25 completely undermines the prosecution's case—a confusing and nearly unattainable standard. The

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27 ¹ For purposes of this petition, a statement of the case and facts is summarized in the courts September 9,
28 2016, Order Denying Habeas Corpus Relief (Exhibit B), in the court file in *People v Shawn Rodriguez*, Placer
County Superior Court Case No. 62-34689, and in the decision by the Court of Appeal in affirming conviction
(*People v Shawn Rodriguez* (Jan. 4, 2005, C045882 [unpub. opn.].)

1 new standard requires that had the new evidence been available at the original trial, the petitioner would
2 “more likely than not” have been acquitted. This standard is comparable to standards in 43 other states
3 and is still difficult to meet, but is fair. That fairness was not applied by the lower court in this case in
4 2015 due to an impossible to meet standard of review, requiring, at a minimum, an order to show cause
5 as to why the relief prayed for should not be granted.
6

7 ***B. Postconviction Changes in the Law – Aiding and Abetting Liability***

8 On June 2, 2014, the California Supreme Court decided *People v Chiu* (2014) 59 Cal.4th 155,
9 in which the Court held that “an aider and abettor may not be convicted of first degree
10 premeditated murder under the natural and probable consequences doctrine. Rather, his or her liability
11 for that crime must be based on direct aiding and abetting principles.” (*Id.* at 158-159.)
12

13 In 2015, in *People v Rivera* (2015) 234 Cal.App.4th 1350, the Court concluded the reasoning of
14 *Chiu* applied equally to conspiracy liability because “the operation of the natural and probable
15 consequences doctrines is analogous” for aiding and abetting and conspiracy liability.
16

17 On September 30, 2018, Senate Bill 1437 was signed by California’s governor. The bill makes
18 significant changes to Penal Code sections 188 and 189. These amendments limit the reach of the
19 felony murder theory of murder liability and effectively ends the role of the “natural and probable
20 consequences” doctrine in murder cases.

21 On October 5, 2021, Governor Gavin Newsom signed into law Senate Bill 775, a Bill that
22 expressly states that post-conviction relief is available “if, among other things, the complaint,
23 information, or indictment was filed to allow the prosecution to proceed under a theory of felony
24 murder, murder under the natural and probable consequences doctrine or ***other theory under which***
25 ***malice is imputed*** to a person based solely on that person’s participation in a crime, or attempted
26 murder under the natural and probable consequences doctrine.” (emphasis added.)
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1 **TIMELINESS OF ALLEGATIONS**

2 This petition is timely pursuant to the timeliness standards regarding claims of wrongful
3 conviction and/or actual innocence and must be considered on its merits. (See, e.g., *In re Sanders*
4 (1999) 21 Cal. 4th 21 697; *In re Robbins* (1998) 18 Cal. 4th 770; and *In re Clark* (1993) 5 Cal. 4th
5 750) As this petition raises Due Process violation claims based on the introduction of false evidence,
6 and because it is based on new law, it is timely filed. In *Gimenez v. Ochoa*, the Ninth Circuit has held
7 that the introduction of flawed or false testimony at trial violates due process "if... the introduction of
8 this evidence 'undermined the fundamental fairness of the entire trial.'" (*Id.*, 821 F.3d 1136, 1145 (9th
9 Cir. 2016).) Petitioner's claims based on the newly amended Penal Code section 1473 is timely because
10 the standard of review by which the court originally adjudicated the claim, wherein that petition was
11 timely filed and where all parties stipulated to the fact that false evidence was introduced against
12 Petitioner at trial, the instant petition must be heard under the new standard in order to remedy the
13 miscarriage of justice that is petitioner's conviction and sentence, this attested to not only by the alleged
14 victim, Nicholas Hamman, but also by the jury by way of the jury questionnaires submitted herewith.
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17 Regardless, even if this Court were to find the petition substantially delayed, the merits of the
18 claims in this Petition indicate a fundamental miscarriage of justice; thus, it would be a fundamental
19 miscarriage of justice to forego merits-review of the claims based on a procedural obstacle. [The
20 California Supreme Court requires merits review of claims that are even justifiably substantially
21 delayed if the claim alleges "facts that a fundamental miscarriage of justice has occurred[.]" *In re Clark*,
22 5 Cal. 4th at p. 775 .] Here, the facts below demonstrate that Petitioner stands wrongfully convicted,
23 warranting merits review of his claims.
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1 **INCORPORATION**

2 Petitioner hereby incorporates by reference his prior state habeas corpus petitions and
3 accompanying exhibits and briefs (Placer County Case Nos. WHC 1400, 62-34689), and the record
4 and briefs in his direct appeal (Case. No. C045882). All exhibits attached hereto are true and correct
5 copies of what they purport to be. If Respondent disputes any of the facts alleged herein, Petitioner
6 requests an evidentiary hearing in this court so that the factual disputes may be resolved. After
7 Petitioner has been afforded discovery and the disclosure of material evidence by the prosecution, the
8 use of this Court's subpoena power, funds, and an opportunity to investigate fully, Petitioner requests
9 an opportunity to supplement or amend this petition.
10

11 **PRELIMINARY REQUIREMENTS**

12 **A. *The Parties:***

13 Petitioner is currently unlawfully confined and restrained of liberty at California Men’s Colony,
14 in San Luis Obispo California, in San Luis Obispo County. (§ 1473, subd. (a).)
15

16 Respondent, Danny Samuel, is currently the Warden that has custody.
17

18 **B. *Jurisdiction and Venue:***

19 “The Supreme Court, courts of appeal, superior courts, and their judges have original
20 jurisdiction in habeas corpus proceedings.” (California Constitution, Article VI, section 10.) This court
21 obtains venue because Petitioner was prosecuted in Placer County.
22

23 **C. *Administrative Remedies:***

24 There are no none.
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **ARGUMENT**

3 **I.**

4 **THE ADMISSION OF FALSE TESTIMONY AT TRIAL VIOLATED**
5 **PETITIONER’S STATE AND FEDERAL CONSTITUTIONAL RIGHTS**
6 **TO DUE PROCESS AND A FAIR TRIAL SUCH THAT RELIEF IS**
7 **WARRANTED UNDER PENAL CODE SECTION 1473(b)(3)(A)**

8 Petitioner is entitled to habeas relief under section 1473(b)(3)(A) because it is indisputably true
9 that false testimony was presented at his trial that was substantially material or probative as to the issue
10 of guilt or punishment. (*In re Richards* (2016) 63 Cal.4th 291.) The admission of false evidence also
11 violated Petitioner's federal due process rights under the Fifth and Fourteenth Amendments to the
12 United States Constitution. (*Hicks v. Oklahoma* (1980) 447 U.S. 343, *Napue v. Illinois* (1959) 360
13 U.S. 264, and *Giminez v Ochoa*, 821 F.3d 136 (9th Cir. 2016).) Because Petitioner's due process and
14 section 1473 claims rely on the same factual basis they are discussed together to avoid repetition and
15 to aid in the efficiency of this court's review.

16
17 As previously articulated, there is no dispute that material witness and alleged victim Nicholas
18 Hamman committed perjury at Petitioner’s trial as conceded by Respondent and held by this court in
19 the 2015 habeas corpus proceedings. (See Exhibit C.) The *dispute* lies in the impossible standard of
20 review that existed at the time and as to whether Nicholas Hamman’s lies were confined to “how high
21 the water was” as argued by Respondent and found by the court.

22
23 ***A. Nicholas Hamman’s False Testimony***

24 Review of the Hamman letters, not all of which have heretofore been provided to Petitioner by
25 the prosecution, reveals in two separate and distinct paragraphs that Hamman committed perjury. In
26 paragraph one of nearly duplicative letters Hamman states, “I perjured myself in a trial against two
27 different defendants, back in 2003; but I’m a Christian now”. (Exhibit B at pp. 1-2). After identifying
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1 Petitioner and co-defendant Anna Ruggs, identifying each by their respective dates of birth, what their
2 respective sentences were, and where they were (then) currently housed, Hamman specified in run-on
3 sentences in paragraph two of these same letters that “I lied about how deep the water in the cell got it
4 didn’t get up to my kneck (sic) it only got up to my lower part of my thighs + then, I was able to move
5 the rags they had stuffed under the door it went down, the water that is.” In other words, Hamman
6 first admits to committing perjury at trial, then identifies *one aspect* of that false testimony, i.e., “how
7 high the water got.” (*Id.*) Petitioner asserts that the trial court should have (but did not) appointed a
8 referee to investigate and interview Nicholas Hamman as to the extent to which he perjured himself,
9 as the court was in receipt of other evidence, by way of affidavits, wherein Nicholas Hamman admitted
10 to lying at Petitioner’s trial.
11

12
13 The court file in this case contains an affidavit from (then) inmate Thurl Light (CDC # F68745)
14 wherein Mr. Light attests to Nicholas Hamman admitting to Mr. Light that he had perjured himself as
15 to whether Petitioner was involved in his kidnap (stating that Rugg kidnapped him on her own), that
16 he had entered the building of his own free will, that he had lied about a bruise he had received, and
17 lied about all of these things in order to implicate that Petitioner was more involved in the matter than
18 what was true and so that Petitioner would be punished more severely. Affidavits similar to the one
19 submitted by Mr. Light were also submitted by inmates Anaal-Rad Guinn (CDC # H73336), Jose
20 Witrago (CDC # G24066) attesting to Hamman making these same admissions to them while
21 incarcerated. Inmate Light submitted a separate affidavit attesting to the fact that while he and Nicholas
22 Hamman were in the prison’s Administrative Segregation Unit, Nicholas Hamman informed him that
23 the District Attorney’s office sent someone to interview him and that at said interview the representative
24 attempted to intimidate and dissuade Hamman from recanting his trial testimony. Rather than giving
25 these declarations plenary consideration, the trial court relied on the representations of the District
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1 Attorney’s office who alleged that Hamman’s recantations were confined to “how high the water was”.
2 Even assuming, without conceding, the veracity of the District Attorney’s representations as to what
3 Nicholas Hamman did or did not admit to, the fact remains that Hamman has admitted to having
4 presented testimony before Petitioner’s jury that was false, giving rise to the maxim “Falsus in uno,
5 falsus in omnibus” (“false in one thing, false in everything”), a common law principle that provides
6 that a witness who testifies falsely about one matter is not credible to testify about *any* matter.
7

8 ***B. The Jury Questionnaires***

9 “ ‘A writ of habeas corpus may be prosecuted’ where ‘[f]alse evidence that is substantially
10 material or probative on the issue of guilt or punishment was introduced against a person at a hearing
11 or trial relating to his or her incarceration.’ (§ 1473, subd. (b)(1).)” (*In re Figueroa* (2018)
12 4 Cal.5th 576, 588, 229 Cal.Rptr.3d 673, 412 P.3d 356.) A petitioner bears the burden of proving, “ ‘
13 “by a preponderance of the evidence, facts that establish a basis for relief on habeas corpus.” ’ ”
14 (*In re Cox* (2003) 30 Cal.4th 974, 998; *In re Rogers* (2019) 7 Cal. 5th 817, 833.)
15

16 In denying habeas corpus relief under the previous standard, the court concluded that “There is
17 no reasonable probability that even one juror would render a contrary verdict upon a retrial.” (See
18 Exhibit B, *Order Denying Habeas Corpus Relief*.) This is simply not so, as the questionnaires
19 submitted by Petitioner’s jury make clear that, had Nicholas Hamman’s jury not been lied to, it is *more*
20 *likely than not* that the outcome at trial would have been different. (Penal Code § 1473(b)(3)(A).)
21

22 Far from the courts finding that not even one juror would render a contrary verdict if they were
23 presented with the undisputed fact that Nicholas Hamman lied at trial, the jury questionnaires provide
24 post-trial evidence that, absent confusing and conflicting jury instructions provided at trial, they would
25 not have convicted Petitioner...at all. (See Exhibit D, *Jury Questionnaires*.)
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1 In Jury Questionnaire #1, the juror was asked if the jury discussed and understood the law in
2 regards to the conspiracy and attempt to kill charges, to which the juror answered “We discussed but
3 obviously, did not understand that the law requires. (Exhibit D at p. 1.) This juror was further asked
4 “Based on the evidence you heard in this case, do you feel that life imprisonment is a fair punishment
5 for Shawn Rodriguez.” The juror answered: “It seems very harsh given that I do not believe he
6 intended to kill him I do believe Shawn did not want to open the cell door for fear of N Hamman.
7 Shawn obtained a hack saw to turn the water off. We’ll never know if he would have called the police
8 to report. I believe he would have. I don’t believe Shawn was part of a plan to entrap the victim that
9 weekend. They just happened to run into him.” This question, “Based on the evidence you *heard*”
10 includes the fact that the juror heard Nicholas Hamman’s false testimony, and it is clear from the
11 questionnaire that this juror, as with a majority of jurors questioned, opined that but for the judge’s
12 instructions they would have convicted on false imprisonment *only*.
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15 In Jury Questionnaire #2, the juror was asked if the jury discussed and understood the law in
16 regards to the conspiracy and kidnap charges, to which the juror answered: “No, I do not believe so.”
17 (Id. at p. 3) When asked as to the punishment administered, the juror expressed shock and stated: “It
18 is my opinion that the punishment does not fit the crime. Nobody was hurt, where is the justice?” (Id.)
19

20 In a handwritten juror statement, another juror complained that there were a few standout jurors
21 who would not listen to reason, who “wanted guilty verdicts on everything, without further discussion.
22 (Exhibit D at p. 4.) This juror went on to state that “I personally thought Mr. Rodriguez was guilty of
23 false imprisonment, robbery and auto theft only and innocent on all other charges.” (Id.) (emphasis in
24 original.) These juror statements are part and parcel of the confusion expressed as to the trial courts
25 instructions and belies the previous courts findings as to what these jurors would have determined but
26 for Nicholas Hamman’s false testimony.
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1 In *Gimenez v. Ochoa*, the Ninth Circuit held that the introduction of false testimony at trial
2 violates due process "if... the introduction of this evidence 'undermined the fundamental fairness of
3 the entire trial.'" 821 F.3d at 1145 6 (9th Cir. 2016) [quoting *Lee v. Houtzdale SCI*, 798 F.3d 159, 162
4 (3d Cir. 2015)]. Moreover, the use of flawed evidence to convict Petitioner denied him due process
5 because it was so arbitrary that "the factfinder and the adversary system [were] not. ... competent to
6 uncover, recognize, and take due account of its shortcomings." (*Barefoot v. Estelle* (1983) 463 U.S.
7 see also *Hicks v. Oklahoma* (1980) 447 U.S. 343, 346 ["Such arbitrary 12 disregard of the petitioner's
8 right to liberty is a denial of due process of law."].) A "conviction based on false evidence warrants a
9 new trial if there is a reasonable probability that, without the evidence, the result of the proceeding
10 would have been different." (*Spivey v. Rocha*, 194 F.3d 971, 979 (9th Cir. 1999) (internal quotation
11 marks and alteration omitted). As such, the standard for determining prejudice under Petitioner's due
12 process claim is identical to the materiality standard for his section 1473 claim.

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15 Petitioner asserts, and these courts have held, that a new trial is the only just result when a
16 person is convicted on false testimony. (See *Mesarosh v. United States* (1956) 352 U.S. 1, 9 ["The
17 dignity of the United States Government will not permit the conviction of any person on tainted
18 testimony."])

19
20 ***A. California Penal Code Section 1473***

21 Under California Penal Code section 1473, a writ of habeas corpus may be granted where "[false
22 evidence that is substantially material or probative on the issue of guilt or punishment was introduced
23 against a person at any hearing or trial relating to his or her incarceration." (Penal Code § 1473(b)(1).)
24 False evidence is "substantially material or probative" if there is a reasonable probability that, had the
25 evidence not been introduced, the result of the trial would have been different. Whether there is a
26 reasonable probability that the result would have been different is an objective determination based on
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1 the totality of the circumstances. (*In re Malone* (1996) 12 Cal. 4th 935, 965-66.) Here, the totality of
2 the circumstances include the juror questionnaires, which in this case establish that not only did the
3 jury express confusion as to the instructions provided by the court, but also shock and regret upon
4 learning that Petitioner had received a life sentence. Accordingly, a prima facie case exists establishing
5 that “it is more likely than not” that, had the jury known that Nicholas Hamman falsely testified, the
6 outcome would have been different.
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8 II.

9 REVIEW OF PETITIONER’S CONVICTION IS REQUIRED PURSUANT 10 TO CALIFORNIA RULES OF COURT, RULE 5-110

11 It is well established that the duty of a public prosecutor or other government lawyer is to seek
12 justice, not merely to convict. It is also well-settled that the prosecutor's interests in
13 pursuing justice extend into the post-conviction phase of a case. More than thirty-five years ago, the
14 United States Supreme Court recognized that a prosecutor is “bound by the ethics of his office” even
15 after securing a conviction. (*Imbler v. Pachtman*, 424 U.S. 409, 427 n.25 (1976).) This consensus
16 understanding that the obligations of the State continue beyond conviction has been recently codified
17 in the Model Rules of Professional Conduct, requiring a prosecutor to take remedial steps in the post-
18 conviction phase of a case when she is aware of evidence establishing or suggesting a defendant's
19 innocence. (*Model Rules of Prof'l Conduct* R. 3.8(h) (2010).) This is reinforced by California Rules of
20 Professional Conduct, Rule 5-110, which became effective on November 2, 2017.
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23 A. *Rule 5-110, Special Responsibilities of a Prosecutor*

24 Unlike lawyers, who are duty bound to serve their clients as zealous advocates, a prosecutor
25 is an advocate of justice for *all* parties, not just one particular side. This dual role—as both a
26 defendant’s adversary and a guardian of the defendant’s rights, has been reinforced by the
27 implementation and effectuation of Rule 5-110. Entitled “Special Responsibilities of Prosecutor”,
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1 Rule 5-110 consists of seven sections, (A) through (G), largely mirroring ABA Model Rule 3.8. In
2 general, Rule 5-110 states that a prosecutor has the responsibility of a minister of justice and not simply
3 that of an advocate. This responsibility carries with it specific obligations to see that the defendant is
4 accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special
5 precautions are taken to prevent *and to rectify* the conviction of innocent persons. Specifically,
6 Sections (F) and (G) apply when a prosecutor learns of new, credible, and material evidence that creates
7 a reasonable likelihood of convicted defendant's factual innocence. Here, Petitioner has presented the
8 District Attorney's office with declarations and affidavits from both victim Nicholas Hamman and
9 other witnesses establishing false testimony was introduced at trial. As such, Respondent should join
10 Petitioner in asserting that he is entitled, at a minimum, to a new trial.
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13 III.

14 A FUNDAMENTAL MISCARRIAGE OF JUSTICE OCCURRED IN 15 PETITIONER'S CASE AS A RESULT OF THE PROCEEDINGS 16 LEADING TO CONVICTION UNDER BOTH STATE AND FEDERAL LAW

17 *In re Clark* (1993) 5 Cal.4th 750, 767 recognized that the long-standing bar against "successive
18 petitions" - those raising the same issues rejected in a prior petition or challenging a conviction or
19 sentence on grounds not raised in a prior petition - had sometimes been treated as discretionary. (*Id.* at
20 768.) *Clark* also clarified that the denial of a habeas corpus petition - including a summary denial -
21 precludes consideration of a successive petition unless the petitioner justifies the delay in seeking relief
22 or demonstrates that "a fundamental miscarriage of justice occurred as a result of the proceedings
23 leading to conviction and/or sentence" and set forth specific definitions of what constitutes a
24 miscarriage of justice in this context. (*Id.* at 787-797; *Schlup v Delo* (1995) 513 U.S. 298; *Murray v*
25 *Carrier* (1986) 477 U.S. 478.) "Thus, for purposes of the exception to the procedural bar against
26 successive or untimely petitions, a 'fundamental miscarriage of justice' will have occurred in any
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1 proceeding in which it can be demonstrated: (1) that error of constitutional magnitude led to a trial that
2 was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the
3 petitioner; (2) that the petitioner is actually innocent of the crime or crimes of which the petitioner was
4 convicted; (3) that the death penalty was imposed by a sentencing authority which had such a grossly
5 misleading profile of the petitioner before it that absent the trial error or omission no reasonable judge
6 or jury would have imposed a sentence of death; (4) that the petitioner was convicted or sentenced
7 under an invalid statute.
8

9 Where, as here, a criminal defendant is not provided a fair trial, and he or she is convicted and
10 sentenced to harsh punishment as a result, a miscarriage of justice has occurred. The statements made
11 by Petitioner’s jury post-trial unequivocally express not only that the instructions provided prevented
12 them from finding Petitioner guilty of the lesser offenses of false imprisonment and robbery, but that
13 they were also “shocked” to learn that a life sentence was imposed in this case. In fact, one juror
14 expressly asked, “Where is the justice?” (Exhibit D at p. 4). This is the very definition of “miscarriage
15 of justice”, and the failure to review the claims presented herein would further that grave injustice.
16 (*Bonin v. Calderon*, 77 F.3d 1155 (9th Cir. 1996); see also *Cassim v. Allstate Ins. Co.*, 33 Cal.4th 780:
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19 Under our State Constitution, an error gives rise to a miscarriage of justice mandating reversal
20 of a judgement only when the court, after an examination of the entire cause, including the evidence,
21 is of the opinion that it is “more likely than not” that a more favorable outcome would have resulted
22 absent the perjured testimony, a reasonable chance, more than an abstract possibility. (Cal. Const.,
23 Art.6, § 13; see *People v. Bevins*,(1960) 54 Cal.2nd 71.) Based on the record, Petitioner claims that he
24 is entitled to relief from his criminal conviction because the facts of this case fall within the *Clark*,
25 *Reno*, *Martinez*, *Schlup*, and *Murray* exceptions.
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IV.

**PETITIONER’S CONVICTION MUST BE REVERSED BECAUSE THE
RECORD DOES NOT ESTABLISH BEYOND A REASONABLE DOUBT
THAT THE JURY CONVICTED HIM ON LEGALLY VALID GROUNDS**

Notwithstanding the undisputed fact that Petitioner’s conviction is based in material part upon false testimony introduced at trial, Petitioner also asserts that, because his jury was provided conflicting and confusing instructions on the prosecution’s multiple theories of liability, including conspiracy and aiding and abetting, he is entitled to relief on the merits of his claim under Chiu, as the trial court committed prejudicial jury instruction error. (*People v Chiu* (2014) 59 Cal.4th 155, *People v Rivera* (2015) 234 Cal.App.4th 1350 *Chapman v California* (1967) 386 U.S. 18; *In re Brigham* (2016) 3 Cal.App.5th 318; *In re Johnson* (2016) 246 Cal.App.4th 1396; *People v Vega-Robles* (2017) 9 Cal.App.5th 382.) As Petitioner’s jurors expressly state in post-trial questionnaires that they did not understand the court’s jury instructions (Exhibit D), and as both decisional law as determined by our Supreme Court and legislative enactments subsequent to Petitioner’s convictions have eliminated the natural and probable consequence doctrine as a valid theory of criminal liability, reversal of Petitioner’s conviction and sentence is required. (Senate Bills 1437 & 775.)

A. The Trial Court Instructed on an Invalid Natural and Probable Consequences Theory of Liability

The currently available records unequivocally confirm that the jury instructions in petitioner’s trial were infected by an erroneous instruction on co-conspirator liability under the natural and probable consequences doctrine in the identical way found prejudicial in *Chiu* and *Rivera*.

As the prosecution in this case relied heavily on a co-conspirator theory of liability at trial, the trial court, during its instructions, informed the jury that “conspiracy is a crime, instructed the jury on

1 aiding and abetting liability under CALJIC No.'s 3.00, 3.01, and 3.02 (See Exhibit D, *Jury*
2 *Instructions*.) The trial court went on to instruct the jury on CALJIC 6.11:

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4 "Each member of a criminal conspiracy is liable for each act and bound by each declaration
5 of every other member of the conspiracy if that act or declaration is in furtherance of
6 the objective of conspiracy.

7 The act of one conspirator pursuant to or in furtherance of the common design of the
8 conspiracy is the act of all conspirators.

9 A member of a conspiracy is not only guilty of the particular crime to his knowledge
10 his confederates agree to and commit but is also liable for the *natural and probable*
11 *consequences* of any crime of a co-conspirator to further the object of the conspiracy,
12 even though that crime was not intended as part of the agreed-upon objective and
13 even though he was not present at the time of the commission of that crime.

14 You must determine whether the defendant is guilty as a member of a conspiracy to
15 commit the originally agreed-upon crime or crimes and, if so, whether the crimes
16 alleged in counts one, two, and three was perpetuated by co-conspirators in furtherance
17 of that conspiracy and was a *natural and probable consequences* of that agree-upon
18 criminal objective of that conspiracy"

19 (Exhibit E at p. 4; see also Exhibit E, *Trial Transcript*.)

20 Following the giving of these instructions, and after arguing direct aiding and abetting and natural and
21 probable consequence aiding and abetting theories of liability, the prosecutor commented on the trial
22 court's instructions:

23 "Now, remember the Court read to you instructions about principal and aider and
24 abettor and when there's two People involved in crimes often each does the crime
25 if they know what the purpose is and help in any way, they're just as guilty. And
26 this is kind of an example here. It comes up in some of the rest of the case as well."

27 (Exhibit E at p. 4)

28 Because our Supreme Court has repudiated the natural and probable consequences doctrine as a basis
for first-degree murder and conspiracy liability, the submission of that theory in the co-conspirator

1 instructions was unauthorized under California law. This notwithstanding, our Legislature has now
2 eliminated the use of the natural and probable consequence doctrine at trial.

3 **A. Senate Bills 1437 & 775**

4 Historically, California has extended murder liability to non-killers through the natural and
5 probable consequences doctrine. It holds that an aider and abettor is not only guilty of the crime he
6 intended to aid and abet, but also for the natural and probable consequences of any act he knowingly
7 aided or encouraged. (*People v Durham* (1969) 70 Cal.2d 171, 181 (citing *People v Villa* (1957) 156
8 Cal.App.2d 128.) A criminal act need not be planned or agreed upon to be a natural and probable
9 consequence. (*People v Nguyen* (1993) 21 Cal.App.4th 518, 530.) Indeed, it does not even need to be
10 substantially certain to result from the commission of the planned crime. (*Id.*) The determination does
11 not depend on the defendant’s subjective state of mind; rather, the test is what the reasonable person in
12 the defendant’s position should have known was a potential consequence of the act he assisted. (See,
13 e.g., *People v Woods* (1992) 8 Cal.App.4th 1570, 1587.)

14 Senate Bill 1437 (Skinner; Stats. 2018, ch. 1015), enacted by the Legislature and effective as
15 of January 1, 2019, made substantial changes to the liability of an accomplice under both California’s
16 felony-murder rule and doctrine of natural and probable consequences, the doctrine under which
17 defendant was convicted. The legislation has three primary components: (1) a restriction of the ability
18 to prosecute a person for murder when the person is not the actual killer; (2) elimination of the “natural
19 and probable consequence” doctrine (and the possible elimination of second degree felony murder);
20 and (3) the establishment of a resentencing procedure for persons, such as defendant, convicted under
21 the law prior to January 1, 2019.

22 On October 5, 2021, Governor Gavin Newsom signed into law Senate Bill 775 to address what
23 our Legislature determined to be inequities in Senate Bill 1437. In addition to expanding the changes
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1 to Penal Code §1170.95 made by the passage and enactment of SB 1437, Senate Bill 775 clarifies that
2 persons who were convicted of attempted murder or manslaughter under a theory of felony murder and
3 the natural probable consequences doctrine are permitted the same relief as those persons convicted of
4 murder under the same theories.

5
6 As the law now holds that malice may not be imputed upon a defendant simply from
7 participation in a designated crime, Petitioner is entitled to relief in that he stands wrongfully convicted
8 and under the provisions of newly-amended Penal Code §1170.95.

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11 **PRAYER FOR RELIEF**

12 Petitioner is without relief save for habeas corpus. Accordingly, it is respectfully requested
13 that this court:

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- 15 1. Take judicial notice of the record of the record in Placer County Superior Court case no.
16 62-34689 and Court of Appeal case no. C045882.
 - 17 2. Issue an order to show cause before this court why it should not vacate Petitioner's
18 conviction and sentence as being in violation of Petitioner's constitutional rights to due
19 process and a fair trial.
 - 20 3. Upon review of the petition and response, vacate Petitioner's conviction and sentence.
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 - 22 4. Grant petitioner such other relief the court deems appropriate
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1 **CONCLUSION**

2 In light of the plain meaning of amended Penal Code § 1473 and Nicholas Hamman’s
3 recantation of his trial testimony, and in light of the prosecution’s use of the natural and probable
4 consequence doctrine at trial, Petitioner urges this court to reverse judgment and grant the relief prayed
5 for by way of this petition.
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8 Dated: _____
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10 Respectfully submitted,

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12 _____
13 Shawn Rodriguez

14 Petitioner, Pro se
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