SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re: Free Lazor,

On Habeas Corpus

_____/

No. _____

PETITION FOR WRIT OF HABEAS CORPUS FOR IMMEDIATE RELEASE FROM CUSTODY, FOR EXCESSIVE TERM OF CONFINEMENT CONSTITUTING CRUEL AND UNUSUAL PUNISHMENT

(*In re Rodriguez* (1975) 14 Cal 3d 639)

PETITION FOR WRIT OF HABEAS CORPUS

MEMORANDUM OF POINTS AND AUTHORITIES

Free Lazor
(Petitioner, In Pro Per)
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I. INTRODUCTION

1. This petition raises a sole issue of substantial law: That petitioner presently suffers punishment that is disproportionate to his culpability, in violation of Article I Section 17 of the California Constitution and the 8th Amendment of the United States Constitution, and he must be immediately discharged and released from all forms of custodial restraint.

2. **Jurisdiction and Venue**. This Court has original jurisdiction and venue to adjudicate the petition. Petitioner was prosecuted in Santa Clara County.

II. PARTIES

3. Petitioner, Free Lazor, is a prisoner incarcerated at California Substance Abuse Treatment Facility and State Prison (CSATF), in Corcoran, California, Kings County.

4. Respondents Stu Sherman, the warden of the CSATF, and Jeffrey Beard the Secretary of the California Department of Corrections and Rehabilitation (CDCR), are Mr. Lazor's custodians and are responsible for petitioner's incarceration.

III. STATEMENT OF THE CASE

5. On September 1, 1983, a trial jury rendered a verdict finding petitioner guilty of second degree murder, following their acquittal of first degree murder.

6. On September 29, 1983, petitioner was sentenced to the parolable sentence of "17 years to life" reducable with half time (day-for-day) credits.

7. Petitioner has appeared before the parole board (BPH) for parole release consideration on at least six occasions from 1994 to the most recent on June 6, 2013, and at no time has the parole board set a base term, despite their own MATRIX requiring them to do so as of August 21, 2000, less half time credits, for a mandatory date of approximately May 1, 1992.

IV. STATEMEMENT OF FACTS [1]

8. Petitioner has maintained consistently for over 30 years the truthful facts that his commitment conviction is the result of a lawful self-defense act necessary to save himself from a ruthlessly violent home-invasion intruder on January 10, 1983, in the sanctity of petitioner's bedroom. (The intruder crashed open petitioner's locked bedroom door. Petitioner shot him in defense of his life and limb).

9. Petitioner, then himself, immediately phoned for police and ambulance to restore order and save a life; the attacker was mobile, up on his feet walking when police arrived by petitioner's call, wounded but very much alive while petitioner still had unfired bullets in his operable gun. Per the state coroner's sworn testimony, the attacker died hours later from still-inexplicable, extraordinary tarrying by state /medical personnel.

10. In a 2007 court order by Honorable Judge Rene Navarro of the Santa Clara Superior Court, the judge opined that this murder conviction case presented "a fair case for imperfect self-defense," based on his extensive review of the case record. (*See **EXHIBIT A**, copy of said court order of Judge Navarro, page 2.*)

11. For eight months *after* the self-defense killing, petitioner was free on property bond posted by members of the community. He was not a danger to anyone in society.

12. While free on bond, petitioner saved the victim of a potentially fatal car-truck crash in Palo Alto, and continued to devote his life, as he always had since his early youth, to service to society for the betterment of the community and mankind. (This included saving the lives *of others also*, as petitioner previously had done.)

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[1] Ordinarily, a "pure law" issue would seem to obviate the need to include the "facts of the case". But because of the fact that the standards of *In re Lynch* (1972) 8 Cal 3d 410, used to determine disproportionate sentences, require consideration of individual case-based facts, petitioner includes these necessary, minimal facts for this purpose. (See *Rodriguez*, *supra*, at p. 655.)

13. Petitioner was in his 20s when the shooting occurred; he is now in his 60s, having spent most of his life in prison for this self-defense act.

14. Petitioner's trial jury were never allowed the verdict option of manslaughter by sudden quarrel nor by heat of passion; they were never allowed the verdict option of involuntary manslaughter, as these verdict instructions were secretly withdrawn without petitioner's knowledge, behind his back, in secret proceedings he never knew took place.

15. The jury never made any "findings of fact," thus eliminating any certainty of determining which murder theory, of multiple conflicting ones, they accepted as true or false, nor any of their bases for their verdict.

16. The gun used in the commitment offense shooting was legal, registered and possessed in petitioner's home, legally, and was never possesed for criminal purposes.

17. Petitioner has no other convictions nor arrests for lawbreaking in his entire life.

18. Petitioner's sentence of 17 years-to-life, for most of his first decade in prison, embraced half-time ("day-for-day") good time crediting, which gave petitioner and actual eight and one-half-year sentence with a *mandatory release date* of May 1, 1992, ***unless*** the killing or crime history of the perpetrator was especially heinous. (*See **EXHIBIT B**, official CDCR release date document showing petitioner's release date of March 1992, then May 1, 1992, then other changed dates going no later than **April 18, 1994**.*)

19. Scores of prisoners, probably hundreds, who came to prison years after petitioner did, on the same or longer sentences for second degree murder and even first degree murder, have already been released home on parole while petitioner, who has served years more in prison, remains incarcerated.

V. CONTENTIONS

A. PETITIONER'S 30+ YEARS INCARCERATION ALREADY SERVED FOR AN ACTUAL 8 ½ YEARS SENTENCE WHILE MANY OTHER SIMILARLY-SITUATED PRISONERS HAVE ALREADY BEEN RELEASED ON PAROLE YEARS EARLIER FOR THE SAME SENTENCE AND EVEN WORSE CRIME CIRCUMSTANCES (INCLUDING FIRST DEGREE MURDER OF WHICH PETITIONER WAS ACQUITTED), HAS ESCALATED TO A POINT OF BEING A DISPROPORTIONATE PRISON TERM UNDER THE *LYNCH STANDARD* PURSUANT TO *IN RE RODRIGUEZ* (1975) 14 CAL 3d, 639, CONSTITUTING CRUEL AND UNUSUAL PUNISHMENT FORBIDDEN BY THE CALIFORNIA AND UNITED STATES CONSTITUTIONS

B. THE ONLY REMEDY, BOTH PERMITTED AND MANDATED BY THE CALIFORNIA CONSTITUTION (ARTCLE 1, SECTION 17) AND THE UNITED STATES CONSTITUTION (AMENDMENT 8), FOR PETITIONER'S PRESENT CRUEL AND UNUSUAL PUNISHMENT STATUS, IS IMMEDIATE RELEASE FROM ALL FORMS AND DEGREES OF CUSTODIAL RESTRAINT

VI. DEMAND FOR RELIEF

For the foregoing reasons, petitioner respectfully demands the following relief in the court:

1. Declare that the petitioner's present and ongoing incarceration constitutes cruel and unusual punishment proscribed by both the California and United States Constitutions, as a disproportionate prison term based on his particular case circumstances, and that the court is duty-bound without discretion to immediately order and effect petitioner's release from all aspects of custodial restraint.

2. Declare that, pursuant to the California Supreme Court in *Rodriguez*, and binding on

all California courts, the length of the sentence actually served by petitioner and similarly-situated prisoners for their commitment offense where no additional judicial sentence was subsequently added, must be governed by the prisoner's criminal history and conduct *at the time of the commitment crime* and shall not be affected by any future, in-prison behavior or alleged behavior which is not directly connected with the commitment crime *and existing at the time of that crime*.

3. Declare that the "primary term" petitioner was judicially sentenced to ended on or about May 1, 1992 (with good time credits) or in no wise not later than sometime during 1994, and that the governing penal statute (Penal Code § 3041) permits ongoing incarceration beyond the primary term *only* for exceptional circumstances *directly connected with the commitment event*, specifically, the prisoner's crime history and "timing and gravity" of the commitment offense itself, forbidding ongoing incarceration beyond the primary term based on any post-conviction factors, unless by increase of the prisoner's sentence by the judicial branch.

4. Declare that the California parole authority must, by law, abide by their own established matrix, to determine and release all parolable "life top" prisoners by the date of their base term determined by their matrix calculation set forth in California Code of Regulations (CCR), Division 2, Section 2403, and that no prisoner can be held in prison beyond that date regardless of "suitability" or "danger to society" status.

5. Immediately conduct a court proceeding with petitioner present in person with appointed counsel, to address all aspects of this case, including to serve as a full "evidentiary hearing" insofar as may be necessary or useful; and thereupon bodily release petitioner to his liberty, free from all aspects, modes and degrees of custodial restraint.

6. To order and immediately put into effect all other aspects of relief for the petitioner, which is commensurate with the court's duty to see that justice is done in this case.

Respectfully presented,

Dated: September 19, 2014

Free Lazor, Petitioner
on Habeas Corpus

VII. VERIFICATION

First, being put under affirmation, I attest as follows:

That I have read and understand the foregoing Petition for Writ of Habeas Corpus, and that all facts stated therein are true based on my own personal knowledge, and that this affidavit was made this 19th day of September, 2014, in the County of Kings, California.

Free Lazor, Petitioner

VIII. MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

The California Constitution, Article 1, Section 17, and the United States Constitution, Amendment Eight, forbid infliction of cruel and unusual punishment (California: cruel *or* unusual punishment). Petitioner's present and ongoing confinement is both cruel and unusual, based on a disproportionate/disparate stretching out of his "rubber band" actual prison term many years beyond that served by others for the same and worse convicted crimes and sentences. Petitioner's cruel and unusual punishment assertions are based on the California Supreme Court's *In Re Rodriguez* (1975) 14 Cal 3d 639, and confirmed in brief passages of the landmark case *In re Dannenberg* (2005) 34 Cal 4th 1061, and very recently reemphasized with greater elaboration in *In re Stoneroad* (2013) 215 Cal App 4th 596. The latter is based on Supreme Court

precedent. The *method of determining whether* a prisoner's incarceration constitutes cruel

and/or unusual punishment is set forth in a three-criteria standard formulated by the California Supreme Court in *In re Lynch* (1972) 8 Cal 3d 410.

B. ARGUMENT

1. CRUEL AND UNUSUAL PUNISHMENT

PETITIONER IS PRESENTLY SUFFERING IMPRISONMENT THAT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT BEING CAUSED BY THE DISPROPORTIONATE/DISPARATE LENGTH OF HIS ACTUAL INCARCERATION TIME, AND HE MUST BE IMMEDIATELY RELEASED FROM ALL FORMS OF CUSTODIAL RESTRAINT

> *Lynch* was the first case in which we recognized that "a punishment may violate article 1, section [17] of the [California] Constitution if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience, and offends the fundamental notions of human dignity."

People vs. Wingo (1975) 14 Cal 3d 169, 175, fn. 5. This is what petitioner raises in this petition – he does not raise the issue of "method" nor does he assert he is "suitable for parole", nor does he raise the issue of not being a danger to the community. All of these are irrelevant in light of the "must release" constitutional mandate, once the disproportionate period of incarceration has reached the cruel and unusual punishment point, as it has here:

> Of course, even if sentenced to a life-maximum term, no prisoner can be held for a period grossly disproportionate to his or her individual culpability ***for the commitment offense***. Such excessive confinement ... violates the cruel or unusual punishment clause (art. 1, § 17) of the California Constitution.

In re Dannenberg, supra at p. 1096, citing *In re Rodriguez, supra* at 646-656 (emphasis added by

petitioner, for the point that ***only*** the commitment offense is to determine the length of incarceration time, not post-conviction alleged prison behavior).

> Thus, we acknowledge, [Penal Code] section 3041, subdivision (b) cannot authorize such an inmate's retention, ***even for reasons of public safety***, beyond this constitutional maximum period of confinement.

Dannenberg, id. At p. 1096. (Emphasis added here and throughout the petition except as otherwise stated.) Petitioner's case facts and whole life history demonstrate beyond question that he is far on the other end of the spectrum of being a "public safety consideration" including his exemplary eight months free on bond *after* the killing, although **this issue of public safety is not raised in this petition**. (It need not be raised, since it is rendered irrelevant by the constitutional guarantee against cruel and unusual punishment.)

For even if a prisoner in this position were a danger to society, once the constitutional maximum time has been reached – years ago in this case – a habeas petitioner must still be released from all forms and modes of custodial restraint. The remedy for such a dangerous prisoner who has reached his constitutional maximum is a new ***judicial*** determination (e.g., a jury trial) for post-commitment offenses that render him a danger, as recognized in the dissent-in-part of *Stoneroad, supra.* (This will be discussed shortly.)

Dannenberg itself, in the passage quoted above, throws out of the *Rodriguez* equation the "suitability" determination that the bulk of the same *Dannenberg* case establishes; because having reached and exceeded the maximum constitutionally-permitted prison term and tipped into the realm of "a disproportionate term" based on the *Lynch* Standard, the issue of "suitability," just like the issue of "public safety consideration," is rendered irrelevant.

2. *IN RE LYNCH*, 8 CAL 3d 410, STANDARD:

THE METHOD FOR DETERMINING DISPROPORTIONALITY OF A PRISON TERM IS SET FORTH AS THE LEGAL STANDARD *IN RE LYNCH*, (1972) 8 CAL 3d 410

(a) PETITONER IS PRESENTLY SUFFERING UNDER CONSTITUTIONALLY-PROHIBITED CRUEL AND UNUSUAL PUNISHMENT BEING CAUSED BY THE DISPROPORTIONATE, EXCESSIVE LENGTH OF HIS CURRENT CONFINEMENT, BASED ON THE *LYNCH STANDARD*

The *Lynch* Standard is a three-prong analysis relied on by the California Supreme Court, and all lower courts, since 1972, to determine whether a prisoner suffers under constitutionally-prohibited cruel and unusual punishment based on a sentence or incarceration period being disproportionate to the offense. The three parts of the analysis, and their application to petitioner's case, *sub judice*, are as follows:

(1) The first "entails an examination of the 'nature of the offense and/or the offender' " with emphasis on public safety. (*Rodriguez, id.*, at p. 655). This is the reason petitioner has included his relevant case "facts" earlier, (see fn. 1, *supra*), because those facts are necessary to determine the nature of petitioner and his act constituting the commitment offense. *Rodriguez,* at p. 654-655.

Petitioner's true life history, his age, now in his 60s, when statistics show recidivism for criminal behavior to be nil, his performance in society while free on bond *after* the killing, his life of no crime, his saving the lives of others by putting his own life at risk on several different occasions, his lofty contributions to society, the arts and posterity, his social work against crime for all of his adult life and most of his youth, his stable personality and psychological state all of his life before incarceration, and many other consistent characteristics of a similar nature all weigh heavily in petitioner's favor. Both severally and cumulatively, they demonstrate an

extreme contrast between petitioner and the typical criminally-oriented life and criminal

proclivities of most prisoners under the same second degree (and first degree) murder convictions, many of whom have been deemed to be not a public safety risk, and released on parole while having served far less prison time than petitioner already has.

Moving to the second aspect of the first prong, the convicted crime, a similar conclusion by comparison and contrast again emerges, again heavily in petitioner's favor. In 2007, after thorough analysis of petitioner's direct appeal decision for the at-issue commitment offense, as well as a careful, independent review of other relevant case documents, Honorable Judge Rene Navarro declared in an Order to Show Cause that the shooting case was in fact "a fair case for imperfect self-defense." (See ***EXHIBIT A***, *Judge Navarro's order, page 2.*) Petitioner was stalked and very violently attacked, including the attacker having kicked open petitioner's locked bedroom door, creating "mitigating circumstances" that would raise anyone's level of panic and natural, defensive response. It's a gross understatement to characterize ***these proven facts*** as merely "highly mitigating."

Petitioner's gun was legal, registered, in his home (his bedroom), and never used for criminal purposes. Petitioner immediately phoned police and for an ambulance which, if not inexplicably delayed by state officials, would have saved the attacker's life.

(2) The second *Lynch* criteria " 'entails a comparison of the punishment ... with sentences provided in California for different offenses which, by the same test, must be deemed more serious' " (*Rodriguez* at p. 655; subsequently modified to include the same offense of *equal*, not only greater, magnitude). Petitioner easily passes this second test, as well, by the fact that *hundreds* of California prisoners who were convicted of the same offense, second degree murder, whose crimes occurred and convictions obtained *years after* petitioner, have already been released on parole, some, **years ago**, having served many years less than petitioner, for the same offense, even with their case facts and life histories proving to be of much more aggravating circumstances as

compared to petitioner's very mitigating circumstances and zero crime history. For examples of

those released years sooner than this petitioner while under the same second degree murder sentence, note the ultra-famous case of **Robert Rosenkrantz** (*In re Rosenkrantz*, (2002) 29 Cal 4th 616). Petitioner has already served ***more than a decade more of hard prison time than Rosenkrantz did for the identical conviction*** *and obvious first degree murder circumstances*. And another case even more celebrated, cited throughout this petition, of John Dannenberg, who was convicted and imprisoned years after petitioner, yet has been home on parole for some five years now, with the identical sentence of petitioner. Less famous cases, including many published in the law books, number in the scores and very probably in the hundreds. ***This is the precise situation that Rodriguez sought to correct; and which should be re-implemented presently, to correct the same disproportionality of the instant case.*** *(See,* ***EXHIBIT C****, various statistical charts from current legal publications showing scores of prisoners released before petitioner, who were convicted many years after him, on the identical sentence (all those with CDC prison numbers of letter designations "D, E, F, G, H, J, K, P"); as well as other similar statistics).*

Then, there are those who committed and were convicted of **first degree** murder, of which petitioner was acquitted by a jury, which carries at least an additional ten years beyond petitioner's sentence, who have also been released on parole *after having served substantially less prison time than petitioner has already served*, though he was acquitted of that much greater offense. This screams for meaningful relief from the courts pursuant to *Rodriguez*; as the very reason and purpose for which *Rodriguez* came into existence. (*See,* ***EXHIBIT D****, legal article of California prisoner Douglas Real (In re Real, No. 102102, March 10, 2014, Santa Clara Superior Court).* This is a prime, and not uncommon, example of another **first degree murderer** granted parole while having served years less than petitioner and, in this case even ***for two murders, a double first degree murder***, with a 27 years-to-life sentence – precisely the disparity that *Rodriguez* and constitutional proscriptions against cruel and unusual punishments for a disproportionate prison

term were purposed to remedy and prevent.

Petitioner thus prevails on this second prong of *Lynch,* also. The facts of this case demonstrate that we have come full circle right back to the precise disparity of actual prison time served which *Rodriguez* remedied in 1975 and for a short era thereafter. The instant case cries out for the exact same remedy again, presently, for the identical reasons, and presents a quintessential classic case of the need for the courts to resurrect and reenact the essentials of the *Rodriguez* holding today.

(3) The third and last prong of *Lynch* is "to compare the penalty under attack to the penalties provided in other jurisdictions for the same offense." (*Rodriguez*, at p. 655). As a California prisoner, petitioner doesn't have online, nor other, access to official statistical data of other states' typical sentences for murder or comparable crimes. However, the recent case of *In re Butler* (March 5, 2014) ___ Cal. App. 4th___ (C. A. 1, No A137273) provides these statistics. Based on these statistics,[2] petitioner meets all three requirements of the *Lynch* criteria to invoke the duty of the Court to implement the remedy of *Rodriguez*, declare that petitioner's present incarceration is in fact constitutionally-proscribed cruel and unusual punishment, and to immediately release him from all modes of custodial restraint.

Once again, petitioner meets the test criteria of *Lynch* in its final prong. Having met the criteria for all three prongs of the *Lynch standard*, the court should implement the relief petitioner demands.

[2] Petitioner asks the court to take Judicial Notice of these statistics pursuant to California Evidence Code § 451 (a) and (f); § 452 (c) and (h); and § 454 (a) (1).

(b) DETERMINATION OF WHAT AMOUNT OF PRISON TIME CONSTITUTES DISPROPORTIONATE EXCESSIVENESS MUST BE BASED ON THE CIRCUMSTANCES PERTAINING TO THE 1983 KILLING, NOT ON POST-CONVICTION, IN-PRISON CONDUCT OR EVENTS .

The California Supreme Court made clear in its holding in *Rodriguez,* that

> [t]he primary [prison] term must reflect the ***circumstances existing at the time of the offense.*** The Eighth amendment and article 1, section 17, proscribe punishment which is disproportionate ***to the particular offense.*** ... Thus the rule that the constitutionality of punishment for crime is individual *culpability* [3] is well established in the law of this state.

Rodriguez, at pp. 652-653. In direct contrast and defiance of this "well established law" in California jurisprudence, respondents have for **22 YEARS** in excess of the term ("primary term") petitioner was sentenced to, inflicted this added punishment on him – not for the second degree murder crime for which he was convicted, *but for false administrative accusations of alleged, petty "in prison misbehavior" which respondents allege occurred many years, even decades, subsequent to the imprisoning conviction* – which petty events **never even occurred at all.**

Respondents also admit, as they must, that all of these in-prison accusations which have snatched away petitioner's *otherwise mandatory* parole for 22 years, have no connection whatsoever to the January 10, 1983 shooting event, the only matter for which petitioner is allowed to be punished with imprisonment, per *Rodriguez.*

Rodriguez makes clear one principle emphasized in three different ways: One, that imprisonment shall be for ***only*** "circumstances ... **of the [commitment] event;**" two, that

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[3] "Culpability," here is obviously referring to culpability ***for the commitment crime*** for which the prison term under attack was pronounced, and **not** for some post-conviction, in-prison alleged behavior, pretended or actually having occurred, subsequent to and with no connection to, the imprisoning conviction. Other, and adequate, punishment systems exist for in-prison behavior without invading and expanding ***judicially***-imposed sentences by the executive branch converting it into a "rubber band" term to be arbitrarily stretched out forever without judicial involvement, as precisely in the case at bar.

disproportionality is to be determined **only** by *"**the particular event**"* (i.e., the convicted offense); and, three, "Punishment [e.g. imprisonment]" shall be ***only*** "for culpability [of the crime]," and not for any post-conviction behaviors, offenses, circumstances, non-convicted alleged bad acts, etc. – whether imagined, fabricated, or real (*Rodriguez*, at pp. 652, 653, and footnotes 17 and 19).

How much clearer could it be stated? The prison term cannot be expanded for other untried, non-convicted, imagined, pretended or even real in-prison behavior that has no actual and direct nexus to the imprisoning conviction: The prison term is "for individual culpability [of the convicted crime]" ***only***. *(Id).*

For the conviction of second degree murder, petitioner served 8-½ actual years in prison (17 years cut in half with half-time credits). For made-up, never tried, unproven (and often **proven-false**), in-prison, petty, alleged behaviors, even as petty as merely disagreeing with a prison employee's opinion, he has served **22 extra years of his life**, of life cruelly taken by gross disproportion to others with identical and worse convictions. This is an additional feature to the entire package of cruel and unusual punishment disparity which punctuates the "unusualness" of this unique case. Petitioner asserts that this feature, too, is unconstitutional, and *Rodriguez* says so.

Finally, in the *Rodriguez* dissent-in-part by Justice Richardson, keying into the primary decision's reference to "considerations ... based in large measure on occurrences subsequent to the commission of the [imprisoning] offense," (p. 652), the Justice makes the important point that "prisoners and parolees who commit new offenses are subject to criminal prosecution for those offenses and need not be released ***if convicted and sentenced*** *to new terms therefore.*" (fn. 17, and accord fn. 3 of the instant petition). This is the only lawful and proper way to expand petitioner's sentence beyond his release date of May 1, 1992, a ***mandatory*** release date *"unless [his crime history was especially heinous* – he has none – *or the imprisoning crime was so exceptionally heinous that he couldn't be safely released into society]."* The precise opposite is now judicially recognized in petitioner's unusual case (*See,* ***EXHIBIT A***, for the court of origin's recognition that this case was exceptionally *mitigated*: "a fair case for imperfect self-defense."). No prison rule

violation, real or fabricated, has ever resulted in a punishment "sentence" which included an increased prison term imposed by the prison guard-adjudicator. That is specifically disallowed by prison regulations for in-prison RVR guilt and punishment determinations. Expanding the prison commitment sentence is a judicial function, as Justice Richardson recognized. All in-prison RVRs fall under the executive branch, not judicial.

Lest there be any doubt, Justice Richardson plainly reiterated from the *Rodriguez* holding that the parole authority may reduce the prison term or "hold the prisoner for [the] duration of the primary term ***but not to exceed it***, depending upon prison behavior." (*Rodriguez,* at p. 659). "Conversely, the primary term ***must reflect the circumstances existing at the time of the offense***" – I.e., not **post**-conviction, in-prison behavior. (*Rodriguez*, at p. 652).

This should clear up any ambiguity or doubt that using in-prison alleged behavior which never resulted in a subsequent **judicial** conviction to extend a prisoner's actual days spent in prison constitutes an excessive sentence (or term) beyond that judicially imposed which, in turn, constitutes cruel and/or unusual punishment as a disproportionate sentence forbidden by both California and United States Constitutions. This is true in regard to both their direct application as well as their permitting the promulgation of administrative regulations and statutes which enlarge actual time spent in prison, years and even decades beyond what *the judicial branch decreed in a court of law*, as has happened here.

(c) THERE IS NO CONFLICT BETWEEN THE SUPREME COURT'S *DANNENBERG* "SUITABILITY" HOLDING NOR WHAT PENAL CODE § 3041 ***ACTUALLY SAYS,*** *AND THE* CASE LAW OF *RODRIGUEZ* THAT'S RELIED ON IN THE INSTANT PETITION

The California Supreme Court, in the well-known seminal *Dannenberg* decision, ruled for the first time that the BPH (Parole Board) must first find a prisoner "suitable" for parole before

granting a parole date and release from prison. (*In re Dannenberg, supra*). However, petitioner, here, **does not raise a "suitability" issue whatsoever** and, to the contrary, with deliberateness he omits that issue from this petition. As *Stoneroad* recognized, the *Rodriguez* issue of a disproportionate excessive prison term constituting cruel and unusual punishment, (the **only** issue at bar), is a distinctly different issue than *Dannenberg* ever addressed. Apparently no one has brought the *Rodriguez* issue to any court since the era contemporary with *Rodriguez* in the 1970s. Petitioner emphasizes that there is no conflict between the *Rodriguez* arguments he presents here and the *Dannenberg* holding; a fact pointedly recognized in the very recent case of *In re Stoneroad, supra.*

In fact, *Stoneroad* relies on *Dannenberg* itself to support this assertion:

> "No prisoner can be held for a period grossly disproportionate to his or her *individual culpability* ***for the commitment offense***" [4] (*In re Dannenberg*, [ ] 34 Cal 4th at p. 1096 [ ]). Because excessive punishment violates the cruel and unusual punishment clause (art. 1, § 17) of the California Constitution, an inmate cannot be retained in prison beyond the constitutional maximum period of confinement.

Stoneroad at p. 618. And even more emphatically pronounced:

> However, relying on *Rodriguez* and *Wingo*, *Dannenberg* acknowledged that [Penal Code] section 3041, which partially combined the term and parole functions *Rodriguez* required to be performed separately, "*cannot authorize detention* ***of a life prisoner*** *eligible for parole,* ***even for reasons of public safety****, beyond this constitutional maximum period* of confinement [*Dannenberg* at p. 1096]."

Stoneroad at p. 620; (emphasis in original of underlined passage).

And again, that "primary term **must** reflect the circumstances ***existing at the time of the offense."*** (*Rodriguez,* at p. 652).

[4] Again, as previously argued, in-prison alleged offenses are not even allowed by law to be applied directly nor indirectly to enlarge one's actual days spent in prison, as Penal Code § 3041 plainly infers, and as even *Dannenberg* and *Stoneroad* recognize here.

> ***The Dannenberg court was not called upon*** to explain how, under the procedure it authorized, an inmate not found suitable for release who claims he has been held beyond the constitutionally permissible period can overcome the obstruction to judicial review the *Rodriguez* Court sought to eliminate.

Stoneroad, at p. 620; clearly making the point that these issues "*are not presented in the case before us*" (Stoneroad, p. 620) – nor were they presented in *Dannenberg*. They are presented now. There is no conflict; they are two very different types of issues and apparently no one has brought the issue to any court in a post-1970s era, until now.

And lastly, from *Stoneroad*:

> As Justice Mosk explained in *Wingo*, "A sentence may be unconstitutionally excessive because the parole authority has fixed a term disproportionate to the offense *or*, *in some circumstances*, ***because no term whatsoever has been set. A failure to fix his term may be just as violative of a defendant's right as an actual excessive term.***"

Stoneroad, at p. 619, (bold emphasis in original). Petitioner Lazor's parole date of May 1, 1992, or any other date, has never been officially "set" by the parole authority, even presently, in his 31st year in prison for an 8-½ years actual sentence; now in his age 60s, having been in his 20s at the time of the self-defense shooting of a "violent crime" intruder in his home. ***What's wrong with this picture?*** And this, while hundreds of other California prisoners with extensive crime histories and senseless motives for their actual, often heinous, second degree and first degree murders, whose crimes occurred years after petitioner's imprisonment began, have already gone home on parole. Again, ***what's wrong with this picture?*** Under the three-pronged criteria of the *Lynch Standard*, this makes petitioner's case **a classic case of cruel and unusual punishment** by way of his present disproportionate actual prison term served, as defined by *Lynch*.

IX . CONCLUSION

For the reasons stated, based on the established three-pronged standard of *Lynch*, the court is duty-bound without discretion to declare petitioner's present confinement to be disproportionate to his culpability, for an act which is now 31 years old, thus constituting unconstitutional cruel and unusual punishment under the California Constitution, Article I, Section 17, and the United States Constitution, Eighth Amendment. The court is under a judicial duty to order petitioner's immediate release from imprisonment and discharge him from all aspects of custodial restraint.

Respectfully,

Dated: September 19, 2014

Free Lazor, Petitioner

LIST OF EXHIBITS

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