

Michael CRAIG Myers  
NAME

PRISON IDENTIFICATION/BOOKING NO.

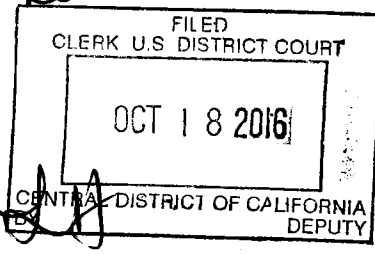
C-32166 E 1374

ADDRESS OR PLACE OF CONFINEMENT

P.O. Box 689

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

Fee Due Related DDT



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL CRAIG MYERS

FULL NAME (Include name under which you were convicted)

Petitioner,

v.

NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED  
PERSON HAVING CUSTODY OF PETITIONER

Respondent.

CASE NUMBER:

CV **CV 16-07758 VBF(FFM)**  
To be supplied by the Clerk of the United States District Court

☐ AMENDED

PETITION FOR WRIT OF HABEAS CORPUS  
BY A PERSON IN STATE CUSTODY  
28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION LOS ANGELES, CA.  
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT  
(List by case number)

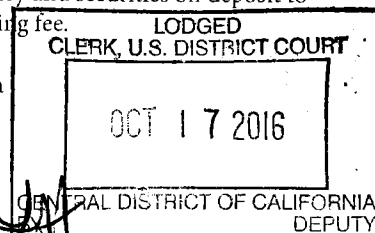
CV

CV

INSTRUCTIONS - PLEASE READ CAREFULLY

- To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
- In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
- Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum. the grounds for relief from the conviction and/or sentence that you challenge.
- You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
- You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
- When you have completed the form, send the original and two copies to the following address:

Clerk of the United States District Court for the Central District of California  
United States Courthouse  
ATTN: Intake/Docket Section  
312 North Spring Street  
Los Angeles, California 90012



PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. ☒ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

### PETITION

1. Venue

- a. Place of detention SOLEDADE STATE PRISON
- b. Place of conviction and sentence POMONA SUPERIOR COURT

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- a. Nature of offenses involved (include all counts): (1) COUNTS P.C. 12021(A)(1)  
POSSESSION OF A FIREARM
- b. Penal or other code section or sections: 667.5 (b)
- c. Case number: KA027232
- d. Date of conviction: 1-23-1996
- e. Date of sentence: 1-23-1996
- f. Length of sentence on each count: 25 TO LIFE
- g. Plea (check one):  
☒ Not guilty  
☐ Guilty  
☐ Nolo contendere
- h. Kind of trial (check one):  
☒ Jury  
☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☒ Yes ☒ No

If so, give the following information for your appeal (and attach a copy of the Court of Appeal decision if available):

- a. Case number: S 235959
- b. Grounds raised (list each):  
 (1) \_\_\_\_\_  
 (2) \_\_\_\_\_

- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_

c. Date of decision: \_\_\_\_\_

d. Result \_\_\_\_\_

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☒ Yes ☐ No

If so give the following information (and attach copies of the Petition for Review and the Supreme Court ruling if available):

a. Case number: B101139 / S060307

b. Grounds raised (list each):

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_

c. Date of decision: \_\_\_\_\_

d. Result \_\_\_\_\_

5. If you did not appeal:

a. State your reasons PETITION never received the right document to submitted to the court. Both Trial Attorney Refuse to Investigate. I have Received the Document from Pomona Police Department, New Evidence.

b. Did you seek permission to file a late appeal? ☐ Yes ☒ No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☐ Yes ☒ No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

a. (1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): \_\_\_\_\_

(4) Grounds raised *(list each)*:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held? ☐ Yes ☒ No

b. (1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: \_\_\_\_\_

(4) Grounds raised *(list each)*:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held? ☐ Yes ☒ No

c. (1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: \_\_\_\_\_

(4) Grounds raised *(list each)*:

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held? ☐ Yes ☒ No7. Did you file a petition for certiorari in the United States Supreme Court? ☒ Yes ☐ No

If yes, answer the following:

(1) Docket or case number (if you know): I don't know

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

8. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

**CAUTION:** *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☒ No

b. Ground two: \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_

\_\_\_\_\_

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No
- (4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☒ No

c. Ground three: \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No
- (4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☒ No

d. Ground four: \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No
- (4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☒ No

e. Ground five: \_\_\_\_\_

(1) Supporting FACTS: \_\_\_\_\_

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☒ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☒ No

9. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☒ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: \_\_\_\_\_

(4) Grounds raised *(list each)*: \_\_\_\_\_

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held? ☐ Yes ☒ No

b. (1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: \_\_\_\_\_

(4) Grounds raised *(list each)*: \_\_\_\_\_

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held? ☐ Yes ☒ No

11. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☒ Yes ☐ No

If so, give the following information (and attach a copy of the petition if available):

(1) Name of court: 2nd Appellate District Court of Appeal(2) Case number: B101139

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): \_\_\_\_\_

(4) Grounds raised (list each):

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_

12. Are you presently represented by counsel? ☒ Yes ☐ No

If so, provide name, address and telephone number: Mr. Larry Pizarro

Telephone (213) 243-0300

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 10-10-2016  
Date

Michael E. Meyers  
Signature of Petitioner



Michael Craig Myers  
Petitioner

\_\_\_\_\_  
Respondent(s)

**DECLARATION IN SUPPORT  
OF REQUEST  
TO PROCEED  
IN FORMA PAUPERIS**

I, Michael Craig Myers, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☒ Yes ☐ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. 27<sup>00</sup> per month

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. \_\_\_\_\_

2. Have you received, within the past twelve months, any money from any of the following sources?

- a. Business, profession or form of self-employment? ☐ Yes ☐ No
- b. Rent payments, interest or dividends? ☐ Yes ☐ No
- c. Pensions, annuities or life insurance payments? ☐ Yes ☐ No
- d. Gifts or inheritances? ☐ Yes ☐ No
- e. Any other sources? ☐ Yes ☐ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: \_\_\_\_\_

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts)  
☐ Yes ☐ No

If the answer is yes, state the total value of the items owned: \_\_\_\_\_  
\_\_\_\_\_

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) ☐ Yes ☒ No

If the answer is yes, describe the property and state its approximate value: \_\_\_\_\_  
\_\_\_\_\_

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on 10-10-2016 Michael C. Meyers  
Date Signature of Petitioner

#### CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ \_\_\_\_\_ on account to his credit at the \_\_\_\_\_ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Officer of Institution/Title of Officer

MICHAEL C. MYERS  
CDCR #C-32166, EW-341L  
C.T.F. CENTRAL FACILITY  
P.O. BOX 689  
SOLEDAD, CALIF. 93960-0689

MICHAEL C. MYERS, )  
 )  
Petitioner, )  
 )  
-vs- )  
 )  
M.E. SPEARMAN, WARDEN, )  
 )  
Respondent. )  
 )  
 )  
 )  
 )  
 )  
 )

Habeas Corpus No. \_\_\_\_\_

PETITION FOR WRIT OF HABEAS  
CORPUS

COMES NOW, petitioner, Michael C. Myers, pursuant to California Penal Code (P.C.) § 1473(a), California Rules of Court (Cal. R. Ct.) 4.551 et seq., and all other relevant and applicable rules and laws, and hereby requests for the above entitled court to issue forthwith, a writ of habeas corpus specifically ordering petitioner's current conviction for ex-felon in possession of a firearm to be reversed and vacated as it is that such conviction was rendered in violation of, inter alia, petitioner's substantial rights to effective assistance of counsel, to which petitioner further states as follows:

**I. JURISDICTION**

1. Citing P.C. § 1473(a) and the relevant portion thereof:

["]Every person unlawfully imprisoned or restrained of his liberty under any pretense whatsoever may prosecute a writ of habeas corpus to inquire into the cause of such [unlawful] imprisonment." See e.g., In re Ramirez, (2001) 108 Cal. Rptr.2d 299; Cal. R. Ct. 4.551(c).

2. Moreover, because petitioner has already sought review of the claims presented herein in the (lower) state Superior and Appellate Courts, this above entitled court is thus the appropriate (next court level) of jurisdiction to hear this instant petition.

## II. CUSTODY

3. Petitioner is currently in the custody of the California Department of Corrections and Rehabilitation (CDCR), specifically in the immediate custody of M.E. Spearman, warden at the Correctional Training Facility (CTF), located in the city of Soledad, California. Such custody is based on the aforesaid conviction of which petitioner suffered in the Los Angeles County Superior Court under criminal case number KA027232.

## III. STATEMENT OF THE CASE<sup>1/</sup>

4. In an information filed in the Los Angeles County Superior Court in 1995, petitioner was charged with possession of a firearm by a felon within the meaning of P.C. § 12021(A)(1). The information further alleged that petitioner suffered three prior "strike" convictions within the meaning of P.C. § 667.5(b).

5. In January, 1996, petitioner was convicted as charged and subsequently sentenced to 25 years to life.

6. Petitioner filed a timely notice of appeal in the Second Appellate District Court of Appeal wherein his judgment was affirmed. Petitioner sought review in the California Supreme Court, however, review was denied.

7. Petitioner filed several habeas corpus petitions--all of

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<sup>1/</sup>. Through no fault of petitioner's own, the near entirety of his record transcripts were lost "years ago" during a transfer from one prison to another, thus he is unable to provide exact dates and the like as to the procedural history of his case. See petitioner's verified declaration (Decl. Pet.) attached hereto infra as Exhibit (Exh.) A.

which were denied, the latest being on April 12, 2013, in the Second Appellate District Court of Appeal. This instant petition follows.

#### IV. STATEMENT OF FACTS

8. On May 3, 1995, at about 10:00 p.m., Officer Baker of the Pomona Police Department was called out to 990 North Park Avenue in Pomona to investigate a report of gun shots. (RT 310.)<sup>2/</sup> When he arrived at the scene he observed two black men standing against a wall. (RT 311.) The taller of the two walked away despite being asked to come to the police car. The shorter of the two gentlemen complied with Officer Baker's request to kneel on the sidewalk with his knees crossed. (RT 311-312.)

9. The taller gentleman reappeared on the sidewalk and obeyed Officer Baker's command to approach the police car and assume the same posture as the other gentlemen. (RT 313.) After the second taller gentleman came out from the apartment building, a third person (petitioner) came out onto the sidewalk in front of the apartment and then went back into the complex. (RT 314.)

10. A short time later, petitioner reappeared on the sidewalk and this time Officer Baker asked him to stop and petitioner complied. (RT 314.) While questioning petitioner, petitioner told Officer Baker that he was on parole but that he did not live at 994 N. Park Ave, Apt. #1. (RT 351.)

11. This information prompted Officer Baker to make a telephone call to the state parole office in an attempt to find out petitioner's address of record in order to do a parole search of 954 N. Park Ave, Apt. #1. (RT 316.) Officer Baker was unable to contact petitioner's

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<sup>2/</sup>. RT stands for "Reporter's Transcripts On Appeal."

parole officer but he did make contact with parole agent Don Smith who was the acting supervisor. (RT 317.) Agent Smith gave Officer Baker permission to search what Officer Baker believed to be petitioner's apartment. (RT 317-318.)

12. Officer Baker's colleague, Sergeant (Sgt.) Jones knocked on the door of the apartment and a female answered. (RT 318.) Officer Baker searched the apartment and found two handguns under a mattress in one of the bedrooms. (RT 319.)

#### **V. GROUNDS FOR RELIEF**

13. Petitioner submits that his conviction for possession of a firearm by a felon should be set aside in habeas corpus for the following reasons/grounds:

14-A. PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILED TO INSURE PETITIONER'S RIGHT TO CONFRONTATION WAS ACCOMMODATED

15-A. PETITIONER'S SUBSTANTIAL RIGHTS TO DUE PROCESS WERE VIOLATED BY THE PROSECUTION'S FAILURE TO COMPLY WITH PRETRIAL DISCOVERY ORDER(S)

#### **VI. NO OTHER REMEDY AT LAW**

16. This instant petition is remedially essential toward obtaining the sought for relief formally prayed for below infra in that petitioner has no other plain and speedy remedy in the ordinary course of the law to obtain meaningful review of the claims presented herein.

#### **VII. PROCEDURAL ISSUES CONCERNING SUCCESSIVENESS AND/OR SUBSTANTIAL DELAY OF THE CLAIMS PRESENTED HEREIN**

17. Petitioner is aware that at first blush, the claims presented herein have the appearance of inexcusable delay and/or successiveness. Petitioner is likewise aware that "it has long been the rule that absent a change in the applicable law or facts, the court will not

consider repeated applications for habeas corpus claims previously rejected." See e.g., In re Martinez, (2009) 95 Cal. Rptr.3d 570, 579 (quoting In re Clark, (1993) 21 Cal. Rptr.2d 509.) Also see In re Walker, (1974) 1 Cal.3d 76 (a convicted defendant must fully disclose his reasons for delaying in presentation of the facts upon which he would have a final judgment overturned.)

18. Despite the above, such procedural bars are however, subject to exceptions. For example, where the factual basis for a claim was unknown to the petitioner and he had no reason to believe that the claim might be made, a court will continue to consider the merits of the claim if asserted as promptly as possible." Martinez, at p. 579. Also see In re Reno, (2012) 283 P.3d 1181.

19. Another exception to the [procedural bar rule] is, petitions alleging facts, which, if proven, would establish that a fundamental miscarriage of justice occurred as a result of the proceedings leading to conviction and/or sentence." Clark, at p. 59.

20. "[A] 'fundamental miscarriage of justice' will have occurred in any proceeding in which it can be demonstrated, inter alia, that : [1] error of a constitutional magnitude led to a trial that was so fundamentally unfair that absent such error, no reasonable judge or jury would have convicted the petitioner. Th[is] claim will be considered on [its] merits even though presented for the first time in a successive petition or one in which the delay has not been justified." Clark, at p. 509.

21. Finally, the court in In re Harris, (1993) 21 Cal. Rptr.2d 385, has expressly provided a rubric of exceptions to the above noted procedural bars. For example, the Harris court set forth several



distinct "exceptions," including, but not limited to, the following: ["(1)] if the claim is based on constitutional error that is both clear and fundamental, and that strikes at the heart of the trial process; and...(2) if the claim is now couched in ineffective assistance of counsel terms."

22. Here, in this instant case, petitioner submits, as explained in greater detail below, that the claims of which he presents herein squarely satisfy the majority of the above noted procedural exceptions enough so to warrant such claims to be heard on their merits without procedural intervention of any sort.

**A. Petitioner's Claims.**

23. Both, a cursory and indepth review of petitioner's claim of ineffective assistance of trial counsel will show that counsel's failure to investigate and secure the presence of a "key" witness, to wit, an "unidentified person" who purportedly identified petitioner as possessing a firearm--all resulted in petitioner being deprived of his right to confrontation, ergo, his right to a fair trial. Resultantly, petitioner avers that a fundamental miscarriage was made manifest. See e.g., Ground I of Points and Authorities post.

24. Equally and in addition to the above noted claim being couched ineffective assistance of counsel terms, a perusal of such claim will further show that there were no sound, strategical and tactical reasons as to counsel's acts and omissions.

25. As well, petitioner's claims concerning the prosecution's failure to comply with discovery procedures was largely contributory to petitioner suffering a miscarriage of justice. Such "non-compliance"--compounded with trial counsel's above noted acts



and omissions--deprived petitioner of his right to compulsory process to confront, cross examine and potentially impeach the only witness who "accused" and purportedly witnessed petitioner possessing a gun. See e.g., Ground II of Points and Authorities post.

26. Finally and as credibly explained at length in petitioner's verified declaration hereto, petitioner has just acquired for the first time (in late 2012), pertinent portions of his record transcripts that support the instant claims presented herein--all of which the lack thereof prevented him from presenting such claims at an earlier time in a manner that would not be frivolous and conclusory without documentary support (as required by habeas corpus procedures.) Just the same, petitioner is asserting his claims as "promptly as possible" in the wake of his recent "acquirement."

27. In sum and for all of the foregoing reasons, the entirety of petitioner's instant petition should be adjudicated on its merits without procedural intervention of any sort.

#### VIII. PRAYER FOR RELIEF

WHEREFORE, petitioner prays for relief as follows:

1. For a writ of habeas corpus to issue forthwith, directing the Director of the CDCR and petitioner's immediate custodian, M.E. Spearman, warden at CTF, to bring petitioner before the appropriate court of jurisdiction at a designated time to show then why the claims presented herein should not be granted.
2. For the claims presented herein to in fact, be granted forthwith.
3. For an evidentiary hearing to be conducted so as to resolve any and all potential mixed questions of law and fact of which the

claims presented herein may contain.

4. For any other relief of which this court may deem to be just and appropriate in the best interest of justice to be granted just the same.

Executed on this 10 day of 10, 2016

By: Michael C. Myers

Michael C. Myers  
CDCR #C-32166, EW-341L  
C.T.F. Central Facility  
P.O. Box 689  
Soledad, Calif. 93960-0689

**EXHIBIT**

**"B" A**

1 POMONA, CALIFORNIA; WED., JANUARY 17, 1996; 1:45 P.M.  
2 DEPARTMENT EAST O HON. WILLIAM J. MC VITTIE, JUDGE  
3 (APPEARANCES AS PREVIOUSLY NOTED.)  
4

5 (THE FOLLOWING PROCEEDINGS WERE HELD  
6 IN OPEN COURT, OUTSIDE THE PRESENCE  
7 OF THE JURY:)  
8

9 MR. WHITENHILL: YOUR HONOR, I AM GOING TO  
10 MAKE A RECORD WITH REQUESTS MY CLIENT IS MAKING.

11 THE PEOPLE HAVE ELECTED NOT TO PRESENT  
12 A COUPLE OF WITNESSES PRESENTED AT THE ORIGINAL  
13 TRIAL. HE'S ASKING THEY BE BROUGHT TO TRIAL AT THIS  
14 TIME; DON SMITH, THE PAROLE OFFICER, AS WELL AS FRANK  
15 TERRIO.

16 I DON'T NECESSARILY AGREE WITH MY  
17 CLIENT ON THIS AND WOULD I EXERCISE MY RIGHT AS HIS  
18 LEGAL COUNSEL TO DECIDE WHICH WITNESSES ARE GOING TO  
19 BE BROUGHT.

20 I BELIEVE DON SMITH WILL PROBABLY  
21 ASSIST THE PEOPLE IN THE SENSE HE WAS THE AUTHORIZING  
22 PAROLE OFFICER. I BELIEVE THE DEFENSE WOULD BE IN A  
23 BETTER LIGHT TO ARGUE THE PEOPLE DID NOT PROVE THEIR  
24 CASE BEYOND A REASONABLE DOUBT IF DON SMITH WAS NOT  
25 HERE. SO AS A DEFENSE STRATEGY, I DON'T ARGUE WITH  
26 THE PEOPLE IN NOT BRINGING THIS PAROLE OFFICER HERE.

27 IF THEY DON'T WANT TO BRING HIM, IT'S BETTER FOR MY  
28 POSITION.

1 I WANT TO MAKE THE RECORD MR. MYERS IS  
2 REQUESTING MR. SMITH BE HERE AGAINST MY BETTER  
3 WISHES.

4 AS TO THE SECOND WITNESS --

5 THE COURT: LET'S START WITH THAT. I'M NOT  
6 GOING TO ORDER PEOPLE IN HERE WHEN YOU HAVE THE RIGHT  
7 TO SUBPOENA THEM.

8 MR. WHITENHILL: CORRECT.

9 THE COURT: SO IF YOUR CLIENT WANTS THEM  
10 HERE, YOU HAVE THEM SUBPOENAED.

11 MR. WHITENHILL: IF I CHOOSE TO HAVE THEM  
12 HERE.

13 THE COURT: THAT'S A MATTER OF YOUR  
14 PROFESSIONAL DISCRETION AND JUDGMENT. YOU'RE THE  
15 LAWYER; YOU HAVE THE LICENSE. I RESPECT YOU. I  
16 CAN'T JUST BRING IN EVERYBODY HE WANTS TO HAVE HERE.

17 MR. WHITENHILL: I JUST WANT TO MAKE THE  
18 RECORD FOR FUTURE APPELLATE PURPOSES --

19 THE COURT: YOU HAVE. INDEED YOU HAVE.

20 MR. WHITENHILL: -- WHEN MY CLIENT COMPLAINS  
21 THESE WITNESSES WERE NOT HERE.

22 FRANK TERRIO IS AN EXPERT AS TO  
23 FINGERPRINTS. ONE OF THE CRUCIAL ISSUES IN HERE IS  
24 IF MY CLIENT EVER HANDLED THE WEAPON. I DON'T THINK  
25 TERRIO IS GOING TO ASSIST THE PEOPLE OR THE DEFENSE  
26 ON THAT POINT. I READ THE ORIGINAL TRIAL TRANSCRIPT.

27 TERRIO WAS UNABLE TO MAKE ANY IDENTIFIABLE PRINTS ON  
28 A WEAPON. HIS TESTIMONY WAS THAT HE COULD NOT RULE

1 MY CLIENT OUT, WHICH IS MORE OF A NEGATIVE TO OUR  
2 CASE. I THINK I WOULD BE IN A STRONGER LIGHT TO  
3 ARGUE THE EVIDENCE HAS NOT BEEN PROVEN AND THE PEOPLE  
4 ARE LACKING IN THEIR CASE AGAIN.

5 BASED ON MY STRATEGY, MY THEORY OF THE  
6 CASE, I WOULD NOT CALL HIM, BUT FOR MY CLIENT'S  
7 BENEFIT, I WANT THAT ON THE RECORD FOR FUTURE  
8 APPELLATE PURPOSES.

9 THE COURT: WE WILL REFLECT MR. MYERS'  
10 REQUEST THROUGH YOU, AND WE WILL REFLECT THE  
11 RESPONSIVE ALREADY STATED ON THE RECORD.

12 MR. WHITENHILL: THANK YOU, YOUR HONOR.

13 THE COURT: YOU'RE WELCOME. READY TO GET  
14 GOING?

15 THE DEFENDANT: NO, NO, YOUR HONOR, BECAUSE  
16 WE GOT US A LITTLE PROBLEM BECAUSE I STILL HAVE  
17 QUESTIONS I'D LIKE TO ASK BOTH OF THEM.

18 MR. WHITENHILL: THESE WITNESSES.

19 THE COURT: WELL, WHAT DO YOU WANT TO DO?

20 MR. WHITENHILL: SHORT OF MY CLIENT  
21 REPRESENTING HIMSELF, I'M ELECTING NOT TO BRING THOSE  
22 WITNESSES. NOW HE'S MAKING THE REQUEST, BUT AGAIN,  
23 UNLESS HE'S GOING TO HANDLE HIS CASE, IT'S MY  
24 DISCRETION NOT TO BRING THEM.

25 THE COURT: I UNDERSTAND.

26 MR. WHITENHILL: BUT HE MAY CHOOSE TO DO WHAT  
27 HE WOULD LIKE TO DO ON THE CASE.

28 THE COURT: WELL --

1 MR. WHITENHILL: WHAT DO YOU WANT TO DO?

2 THE COURT: I'VE ALREADY RESPONDED,

3 MR. MYERS. I'M NOT BRINGING THOSE WITNESSES ON MY  
4 OWN. YOUR ATTORNEY IS A PROFESSIONAL. IT'S UP TO  
5 HIM WHETHER HE WANTS TO SUBPOENA THEM OR NOT. HE'S  
6 DECIDED NOT TO SUBPOENA THEM. HE DOESN'T WANT THEM  
7 HERE.

8 THE DEFENDANT: HE'S NOT THE ONE WHO WAS  
9 THERE.

10 THE COURT: ARE YOU READY TO PROCEED?

11 THE DEFENDANT: NO, I'M NOT.

12 THE COURT: WELL, SHALL I RING THE BELL AND  
13 GET US GOING?

14 MR. WHITENHILL: I'M READY TO PROCEED, YOUR  
15 HONOR.

16 THE COURT: ALL RIGHT. ARE YOU READY TO  
17 PROCEED?

18 MS. EHRLICH: YES, YOUR HONOR.

19 THE COURT: MR. MYERS, WE'RE ALL READY EXCEPT  
20 YOU, SO I'M GOING TO HAVE TO GET US STARTED.

21 THE DEFENDANT: LET'S GET A MISTRIAL.

22 THE COURT: ALL RIGHT. HERE WE GO. LET'S  
23 BRING OUT OUR JURY.

24 (THE FOLLOWING PROCEEDINGS WERE HELD  
25 IN OPEN COURT, IN THE PRESENCE OF  
26 THE JURY:)

27 MR. WHITENHILL: YOUR HONOR, MAY WE ASK FOR A  
28 RECESS FOR A FEW MINUTES AT THIS TIME OUTSIDE THE



PETITION FOR WRIT OF HABEAS  
CORPUS: PERMISSION TO  
REENTER

COMES NOW, petitioner, Michael C. Myers, pursuant to California Penal Code (P.C.) § 1473(a), California Rules of Court (Cal. R. Ct.) 4.551 et seq., and all other relevant and applicable rules and laws, and hereby requests for the above entitled court to issue forthwith, a writ of habeas corpus specifically ordering petitioner's current conviction for ex-felon in possession of a firearm to be reversed and vacated as it is that such conviction was rendered in violation of, inter alia, petitioner's substantial rights to effective assistance of counsel, to which petitioner further states as follows:

I. JURISDICTION

1. Citing P.C. § 1473(a) and the relevant portion thereof:  
["]Every person unlawfully imprisoned or restrained of his liberty under any pretense whatsoever may prosecute a writ of habeas corpus to inquire into the cause of such [unlawful] imprisonment." See e.g., In re Ramirez, (2001) 108 Cal. Rptr.2d 299; Cal. R. Ct. 4.551(c).



professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Strickland, *supra* at p. 689. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at that time." People v. Jones, (2010) 111 Cal. Rptr.3d 745, 759. [S]econd guessing is to be avoided. People v. Mincey, (1992) 6 Cal. Rptr.2d 822. Stated differently, the question is not what the "best lawyers would have done," nor "even what most good lawyers would have done," but simply whether "some reasonable lawyer" could have acted, in the circumstances, as defense counsel acted in the case at bar. See Coleman v. Calderon, (9th Cir. 1998) 150 F.3d 1105, 1113.

Here, petitioner submits, as explained in greater detail below, that even applying a heavy measure of deference, his trial counsel provided deficient performance when he failed to investigate, locate and present at trial for confrontation purposes, a material ("citizen informant") witness who provided police with information that petitioner was in possession of a firearm.

#### **I-B. The Citizen Informant Was A Material Witness.**

As the record in this case reflects, an Officer Baker (Baker), upon looking for possible dropped narcotics and weapons, was contacted by a person ("citizen") who spoke from an apartment window who provided (Baker) with information that petitioner was in possession of a firearm. See e.g., Exh. B hereto. Based on such information, Baker was prompted to contact petitioner's parole agent for purposes

of "obtain[ing] a parole search of the location." Exh. B hereto. Accordingly, it suffices to conclude with near certainty that absent being provided with the above noted "information," Baker would not have sought to target petitioner for firearm possession and a parole search. Being so, great effort is not required to realize that the above noted "information" was undoubtedly material and relevant evidence thereby rendering the person who provided such information as being a material witness as to petitioner's guilt or innocence. See e.g., Eleazer v. Superior Court, (1970) 83 Cal. Rptr. 586 ("[D]isclosure is required only if the informant is a material witness on the issue of guilt who could give evidence that might exonerate the defendant.")

Given the above, the aforesaid "citizen informant" was a material witness standing tantamount to petitioner's "primary accuser" of gun possession.

**I-C. Trial Counsel Was Obligated To Insure Petitioner Was Afforded The Opportunity To Confront The Aforesaid Citizen Informant.**

Because petitioner has cogently demonstrated ante that the aforementioned citizen informant was "material" and standing in the posture as petitioner's "primary accuser," petitioner advances that trial counsel was obligated to make efforts on his own to locate, investigate and present such witness at trial, or at minimum, move the court to compel the prosecution to produce such witness for purposes of satisfying petitioner's confrontation rights. See e.g., In re Vargas, (2000) 100 Cal. Rptr.2d 265, 271 (quoting In re Gay, (1998) 80 Cal. Rptr.2d 765--["B]efore counsel undertakes to act, or not to act, counsel must make a rational and informed decision on strategy and tactics founded upon adequate investigation and

preparation.")

Here, petitioner maintains that counsel's failure to insure the citizen informant's trial presence was not premised upon sound strategy and tactics, but instead, inexcusable failure. Consequently, petitioner and the jury alike were deprived of the right to evaluate/test all relevant evidence. See e.g., In re Sordesten, (2007) 146 Cal.App.4th 1163, 1170, where the court noted in relevant part:

["A] trial is a search for the truth...however, what is fundamental to this search is that it "is not served but hindered by the concealment of relevant and material evidence...." If we expect jurors to do their jobs, they must be presented with all evidence that is relevant and legally admissible for them to consider. It is then their duty to sift through the body of evidence to resolve what they can accept and believe. The withholding of admissible evidence from them can result in their belief in other evidence that never had to be reconciled with the undisclosed evidence."

Here, counsel's acts and omissions as described herein exuded a total disregard for the above noted "deep-rooted" principles thereby and effectively depriving petitioner of his substantial right to confrontation; for had petitioner been afforded such right as to the aforesaid witness, it is quite probable that a different result would have been made manifest in that such witness may have been favorably impeached or realized that the information it provided was inaccurate.

**GROUND II-A.**

**PETITIONER'S SUBSTANTIAL RIGHTS TO DUE PROCESS WERE VIOLATED BY THE PROSECUTION'S FAILURE TO COMPLY WITH PRETRIAL DISCOVERY.**

With respect to the disclosure mandated by the Constitution, "[t]he prosecution has a duty under the Fourteenth Amendment's due process clause to disclose evidence to a criminal defendant' when the evidence is 'both favorable to the defendant and material on either guilt or punishment.' Evidence is 'favorable' if it hurts

the prosecution or helps the defense. 'Evidence is "material" "only if there is a reasonable probability that, had [it] been disclosed to the defense, the result...would have been different."' See People v. Superior Court (Meraz), (2008) 165 Cal.App.4th 28, 47 (quoting People v. Earp, (1999) 85 Cal. Rptr.2d 857; United States v. Bagley, (1985) 473 U.S. 667, 674-678; Brady v. Maryland, (1963) 373 U.S. 83.) "Moreover, the duty to disclose exists regardless of whether there has been a request by the accused, and the suppression of evidence that is materially favorable to the accused violates due process regardless whether it was intentional, negligent or inadvertent." Meraz, at p. 47 (quoting Sordesten, supra at p. 1163.) Also see P.C. § 1054 et seq.

Here, and incorporating Ground I supra by reference as if fully rewritten herein, petitioner has shown with persuasion that the aforementioned "citizen informant" was both "material" and equated to petitioner's "primary accuser." Petitioner has also demonstrated that he was effectively deprived of his substantial right to confront such witness at anytime. As such, petitioner now submits that the prosecution's failure to disclose the identity and whereabouts of the above noted citizen informant was error of a prejudicial magnitude. This notion is especially buttressed by the fact that petitioner had two trials as to his current crime of conviction--the first resulting in a hung jury with the majority of the jurors voting for not guilty--all of which indicates the "closeness" of the case and lack of overwhelming evidence of guilt. Thus, Without "disclosure," petitioner was likewise deprived of the ability to "look into" whether or not evidence could be conjured up to impeach

such person's credibility, such as, but not limited to, prior arrests, convictions and the like.

In sum, the prosecution's failure to disclose as described herein in conjunction with trial counsel's deficient performance as outlined herein ante, clearly prejudicially impacted the integrity and fundamental fairness of petitioner's overall trial proceedings.

Any reasoning to the contrary should be discounted.

CONCLUSION

For all of the foregoing reasons and those stated in the exhibits hereto, the sought for relief formally prayed for supra should be granted at this time.

Respectfully submitted,

By:

Michael C. Myers  
Michael C. Myers  
CDCR #C-32166, EW-341L  
C.T.F. Central Facility  
P.O. Box 689  
Soledad, Calif. 93960-0689

01/10-10-2016

VERIFICATION

I, Michael C. Myers, hereby declare and affirm under penalty of perjury that all of the foregoing is true and correct and that I am a true party to this instant action, to wit, the petitioner.

Executed on this 10 day of 10, 2016.

By: Michael C. Myers  
Michael C. Myers  
CDCR #C-32166, EW-341L  
C.T.F. Central Facility  
P.O. Box 689  
Soledad, Calif. 93960-0689



# EXHIBIT "B"

~~EXHIBIT 1-A~~

1 A NO, HE DIDN'T.

2 Q WHAT HAPPENED THEN?

3 A I BELIEVE IT WAS AT THAT POINT THAT I  
4 ASKED WHO LIVED AT THE LOCATION. THE DEFENDANT  
5 INFORMED ME THAT HE DID. THE OTHER SUBJECTS TOLD ME  
6 THAT THEY LIVED SOMEWHERE ELSE.

7 I LEFT THOSE SUBJECTS WITH OTHER  
8 OFFICERS AND I BEGAN RESPONDING -- I RESPONDED TO THE  
9 AREA, THE NORTH PORTION OF THE DRIVEWAY WHERE THE ONE  
10 SUBJECT HAD RUN. I BEGAN LOOKING IN THIS AREA FOR  
11 ANY POSSIBLE DROPPED WEAPONS OR NARCOTICS OR OF THAT  
12 NATURE, AND I WAS CONTACTED BY A SUBJECT.

13 Q WERE YOU CONTACTED BY ONE OF THESE  
14 THREE MEN THAT WE'VE ALREADY TALKED ABOUT?

15 A NO.

16 Q OKAY. HOW WERE YOU CONTACTED?

17 A THE SUBJECT SPOKE TO ME THROUGH A  
18 WINDOW.

19 Q DID THIS PERSON IDENTIFY THEMSELVES TO  
20 YOU?

21 A NO, HE DID NOT.

22 Q AND DID YOU HAVE A CONVERSATION WITH  
23 THIS PERSON?

24 A YES, I DID.

25 Q AND AS A RESULT OF THIS CONVERSATION  
26 WHAT, IF ANY, CONCLUSIONS DID YOU DRAW?

27 A WELL, IT HEIGHTENED MY SUSPICION THAT  
28 THE DEFENDANT WAS INVOLVED IN THE --- POSSIBLY BEING



Exhibit I-B

316

1 IN POSSESSION OF A FIREARM.

2 Q AND WHAT HAPPENED THEN?

3 A I BELIEVE I REQUESTED A SUPERVISOR  
4 WITH A CELLULAR PHONE TO RESPOND TO THE LOCATION SO I  
5 COULD CONTACT STATE PAROLE AND OBTAIN A PAROLE SEARCH  
6 FOR THE LOCATION.

7 Q AND IS THE SUPERVISOR THAT YOU  
8 CONTACTED, IS THAT SERGEANT JONES?

9 A YES.

10 Q THE GENTLEMAN WHO TESTIFIED BEFORE  
11 YOU?

12 A YES.

13 Q AND DID HE ASSIST YOU IN THAT REGARD?

14 A YES, HE DID. HE SHOWED UP AT THE  
15 LOCATION.

16 Q AND HE HAD A CELLULAR PHONE?

17 A YES, HE DID.

18 Q DID YOU CONTACT SOMEONE FROM PAROLE?

19 A YES, I DID.

20 Q WHO DID YOU TRY TO CONTACT FIRST?

21 A WELL, I FIRST TRIED TO CONTACT MR.  
22 MCCRARY, WHO IS A PAROLE OFFICER, BUT HE DIDN'T LIST  
23 HIS PHONE NUMBER WITH THE POLICE DEPARTMENT. IT WAS  
24 AFTER HOURS SO I HAD NO WAY OF GETTING AHOLD OF HIM.  
25 I KNEW THAT PAROLE AGENT DON SMITH HAD  
26 HIS NUMBER LISTED WITH THE POLICE DEPARTMENT, SO I  
27 TELEPHONED HIM. PAROLE AGENT SMITH GAVE ME MR.  
28 MCCRARY'S HOME PHONE NUMBER AND TOLD ME THAT BEFORE

1 POMONA, CALIFORNIA; TUESDAY, SEPTEMBER 26, 1995

2 2:10 P.M.

3 DEPARTMENT EAST "M" HON. CHARLES W. MCCOY, JR. JUDGE

4 (APPEARANCES AS HERETOFORE NOTED.)

6 (THE FOLLOWING PROCEEDINGS WERE

7 HELD IN OPEN COURT IN THE

8 PRESENCE OF THE JURY:)

9 (THE FOLLOWING PROCEEDINGS WERE

10 HELD IN OPEN COURT OUT OF THE

11 PRESENCE OF THE JURY:)

12 THE COURT: WE ARE ON THE RECORD ON PEOPLE VERSUS  
13 MYERS.

14 IF COUNSEL CAN MAKE THEIR APPEARANCES.

15 MR. NELSON: THANK YOU, YOUR HONOR. MARK NELSON,  
16 DEPUTY PUBLIC DEFENDER ON BEHALF OF MR. MICHAEL MYERS.

17 MRS. EHRLICH: GOOD AFTERNOON. GAIL EHRLICH ON  
18 BEHALF OF THE PEOPLE.

19 THE COURT: DEFENDANT IS PRESENT IN COURT.

20 MISS EHRLICH.

21 MRS. EHRLICH: YOUR HONOR, IT IS MY UNDERSTANDING  
22 THAT PRIOR TO PROCEEDING WITH TRIAL IN THIS MATTER  
23 COUNSEL HAS A 402 MOTION RELATING TO MIRANDA RIGHTS, IF  
24 I UNDERSTAND IT.

25 MR. NELSON: THAT WILL BE CORRECT, YOUR HONOR.  
26 THERE ARE ACTUALLY SEVERAL ISSUES THAT I WISH TO  
27 ADDRESS IN A 402. I BELIEVE AT LEAST ONE OF THOSE  
28 ISSUES IS GOING TO BE CONTESTED BY THE PEOPLE, THAT

1 ~~WILL BE ANY MENTION OF THE ANONYMOUS INFORMANT, THE~~  
2 PERSON THAT WAS SPEAKING FROM A WINDOW, MALE VOICE I  
3 BELIEVE IT WAS THE DESCRIPTION THAT OFFICER BAKER GAVE.

4 MRS. EHRLICH: THAT IS CORRECT, YOUR HONOR. THE  
5 PEOPLE DO NOT INTEND TO GO INTO THAT AREA.

6 THE COURT: ALL RIGHT.

7 MR. NELSON.

8 MR. NELSON: THE NEXT ISSUE WOULD BE CONCERNING  
9 AN AREA OF THE ALLEGED STATEMENT BY MR. MYERS, AND THAT  
10 WOULD BE THE DISCUSSION CONCERNING THE SO-CALLED GHOST  
11 TOWN SMOKER.

12 IT'S MY UNDERSTANDING THAT THE OFFICER,  
13 OFFICER BAKER, AS HE INDICATED IN HIS REPORT DURING A  
14 DISCUSSION WITH MR. MYERS, MR. MYERS ALLEGEDLY REFERRED  
15 TO THE GUN AS A GHOST TOWN SMOKER, WHICH I BELIEVE  
16 OFFICER BAKER HAS TESTIFIED TO OR FELT RELATES TO A GUN  
17 THAT WAS USED IN A HOMICIDE, 187.

18 SINCE NO 187 IS BEING ALLEGED OR TO MY  
19 KNOWLEDGE HAD BEEN TIED INTO THAT PARTICULAR GUN, I  
20 THINK THAT THE MENTION OF THE TERM "GHOST TOWN SMOKER"  
21 AND DISCUSSION ABOUT IT WOULD BE QUITE PREJUDICIAL  
22 UNDER THE CIRCUMSTANCES.

23 MRS. EHRLICH: YOUR HONOR, THE STATEMENT WAS MADE  
24 IN RESPONSE TO QUESTIONS RELATING TO HOW MUCH DID YOU  
25 PAY FOR THE GUN AND IT EXPLAINS WHY THE GUN WAS  
26 OBTAINED FOR, ACCORDING TO THE DEFENDANT, \$40. AND SO  
27 HE WAS EXPLAINING THIS IS A GHOST TOWN SMOKER, WHICH MY  
28 OFFICER WILL TESTIFY BASED UPON HIS TRAINING AND

**EXHIBIT**

**"C"**

Case No.

NOTICE OF MOTION BY PETITIONER  
MICHAEL C. MYERS FOR A NEW TRIAL  
PURSUANT TO PC §1179; NEWLY DISCOVERED  
EVIDENCE PURSUANT TO PC §1181; FALSE  
POLICE REPORT PURSUANT TO PC §148.3,  
148.5; UNQUALIFIED STATEMENT PURSUANT  
TO PC §125

16

17

18 TO THE HONORABLE JUDGE; I, petitioner Michael C. Myers, do  
19 hereby request a new trial, or evidentiary hearing upon the  
20 following ground that:

21 1. Newly discovered evidence would give petitioner a fair  
22 opportunity to plead his case and make a difference in the  
23 outcome of a new trial.

24

25

#### BACKGROUND

26

27 On 12/9/2015 petitioner received crucial evidence from the  
28 Pomona Police Department, which proves his place of residence

1 at the time of his arrest. This evidence is crucial because the  
2 arresting officer (Baker) never once checked where petitioner  
3 lived.

4 At the time of his arrest petitioner resided at 888 Ashfield  
5 Ave., in the city of Pomona (see Ex. (A) and (B)).

6 Officer Baker and Sergeant Gordon Jones, under a parole search,  
7 did not search the true residence of petitioner. Officer Baker  
8 and Sergeant Jones knew in advance that they were (without a  
9 search warrant) searching the residence of Lynn McArthur and not  
10 petitioner's (see Ex. (A)(B)(C)).

11 Dispatch had informed officer Baker earlier that petitioner's  
12 place of residence was 888 Ashfield Ave., and not the residence  
13 of Lynn McArthur.

14 At trial officer Baker gave perjured testimony to the jury in  
15 this case. Baker's perjured testimony was used by the prosecutor  
16 to get a conviction. The prosecutor also failed to disclose  
17 critical documents for the jury to see. Said documents could  
18 have made a difference in the outcome of the trial because  
19 petitioner had a right to have the jury hear all the evidence  
20 in this case.

21 Petitioner will show new evidence on this claim (see Ex. (A)  
22 (B) and Art. I §15 of the California Constitution).

23 Petitioner was deprived of life, liberty and property without  
24 due process of law. This court should grant petitioner's motion  
25 for a new trial in the interest of justice.

26 Petitioner has established a prima facie case and has explained  
27 why this court should order the lower court to answer petitioner's  
28 motion on new evidence. Petitioner's new evidence was never

1 introduced at the trial to the jury. (see Ex. (A)(B)(C). The jury  
2 was denied the right to hear and see all the relevant evidence  
3 in this case.

4  
5  
6  
7  
8 Dated: 10-10-2016

By: Michael C. Myers In Pro Per

My name is Michael Craig Myers; I was born in Los Angeles, California, I am 53 years old, and have been incarcerated for the last twenty (20) years for a gun that was not in my possession, which produced no matching fingerprints on the gun that belong to me.

The only thing that I know is coming from Officer Baker, was his testimony that he is the only Officer that had an alleged conversation with the alleged anonymous informant, that he did not introduce at the trial.

**BACKGROUND**

On May 3, 1995, I was arrested for alleged [Possession of a Firearm by a Felon] Penal Code §12021 (A), (1). The facts the Jury heard in this case ended in a hung jury 9 to 3 in favor of acquittal. There were no fingerprints tying me to any gun.

On April 10, 2015, I received my transcripts and I was not aware that the Jury did not believe Officer Baker's



testimony; there was an issue of his creditability. My  
Constitution of the Fourteenth Amendment of my Due Process  
to have a fair trial was a violation. Trial Counsel was  
ineffective assistance by allowing trial court to introduce  
evidence from a third party which is hearsay.

This case is about a key eye-witness who claimed to  
identify me, this is what Officer Baker alleged and  
testified to, and however, to this day there is still no  
witness so how can I call this person to confront the  
allegations made against me. The only evidence prosecution  
introduced at trial was the testimony of Officer Baker,  
right now, no other witness can corroborate if Officer  
Baker is telling the truth. I would like to know the truth  
because I am innocent, I need to find out the truth does  
this anonymous person exist, this is a real question? That  
no one is trying to answer. I believe I have the right to  
confront my accused under the Sixth Amendment (6<sup>th</sup>), of the  
United States Constitution. I am hoping your officer will  
look into my case as I have spent the last twenty (20)  
years of my life trying everything to get someone to listen  
to me, so I pray that someone from your officer will look  
into this case.

TAKE NOTICE

The Trial Court, District Attorney  
Officer, two of the Trial Attorney's  
did not know the identity of the  
anonymous witness, Officer Baker, did  
not know the identity of the person  
who he talked to. All parties failed  
to do an investigation in this  
matter.

There is an eye-witness to this case; this individual was never called to testify for the District Attorney, however, the D.A. used the statements of this alleged witness against me.

---

It is the duty of the Court to establish a Prima Facie case to the Jury, the Jury has the right to make there own determination based on all the physical and material evidence. The only one the Jury did not hear from is the key eye-witness to the D.A. case; this is a miscarriage of justice. Trial court failed to hold an (*In Camera Hearing*) to determine his/her credibility which never took place.

Under the United States Constitution, The Sixth Amendment (6<sup>th</sup>), guarantee's all citizens the right to confront and cross-examine witnesses against him or her; and to have Due Process under the Fourteenth Amendment (14<sup>th</sup>), to have a fair trial. I pray that I have at least opened your mind to launch an investigation into this severe miscarriage of justice.

DECLARATION OF PETITIONER  
MICHAEL C. MYERS IN SUPPORT  
OF MOTION TO SUPPRESS EVIDENCE

14

15

16

17 I, Michael C. Myers is familiar with all the facts in the case  
18 and declare that an evidentiary hearing is necessary to resolve  
19 the issue in this notice of motion.

20

21 Petitioner also has included the following exhibits:

22

23 EXHIBIT 1: Property Report

24 EXHIBIT 2: Registration Worksheet

25 EXHIBIT 3: Postage Record

26

27 I declare under the penalty of perjury that the foregoing is  
28 true and correct.

Executed at California Training Facility, Soledad, California

on 5-12-2016

November 13, 2015  
Friday 7:03 p.m.

Attn: Property Receipt Department  
Pomona Police Department  
490 W. Mission Blvd.  
Pomona, CA.  
91766

RE: Need Property Receipt During Booking 4378915  
=====

Dear Property Receipt Department,

Can you please send me the original Property Receipt, for the following BOOKING #: 4378915 \_\_\_\_\_, where I was booked on this date of 4-22-1995?

Thank you.

*Mr. Michael Craig Myers*  
Sincerely,

Michael Myers C-32166  
CTF Central EW-137-Low  
P.O. Box 689  
Soledad, CA.  
93960-0689

Michael Myers

04/22/95

21:59

## Property Report

DR #: 95 - 067040

Booking #: 00204144

Page: 4

Name: MYERS, MICHAEL CRAIG

Addr: 888 ASHFIELD

City: POMONA

CA 91767

Telephone #:

Social Security #: 556 - 35 - 4963

Sex: M Race: B Height: 5 11 Weight: 172 Hair: Eyes:

Arrest Date: 04/22/95

Arrest Charge: 3056

Aka  
-----

6 Cell #: DT

7 Locker #: 02

8 Booking Jailer: 30295

9 Bulk Property (Y/N): N

10 Desc. Bulk:

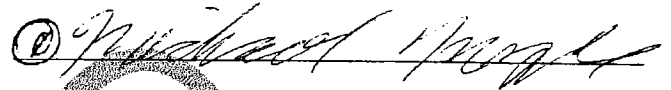
11 Arm Band (Y/N): Y

12 Cash Deposited: 10.43

Description  
 BLU SHIRT/BLU SHORTS  
 GLOVES/BLK-WHT SHOES/WHT SOCKS  
 YM WATCH/YM RING RED-CLR STONE  
 PAPERS/ELECTRICAL CORD

Retained By Prisoner  
 Y  
 N  
 N  
 N

Signature for Property Retained when booked



Signature for Property Returned \_\_\_\_\_

## RECORD OF PROPERTY TRANSACTIONS

Person adding or receiving	Description of property	Date/Time	Intials
	Added _____ Received _____		Prisoner
			Jailer
	Added _____ Received _____		Prisoner
			Jailer
	Added _____ Received _____		Prisoner
			Jailer

THE CITY OF  
**POMONA**

Police Department

490 W. Mission Blvd., Pomona, CA 91766



DR#95-067040

3.1 12/03/15 LA CA 9300

neopost<sup>®</sup>

12/02/2015

**US POSTAGE \$000.47**

FIRST-CLASS MAIL  
PSRT



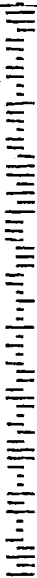
ZIP 91766  
041L 2202905

MICHAEL C MYERS  
C-32166 E/137 L  
P. O. BOX 689  
SOLEDAD, CA 93960-689

93960

JYT-GMP

25



457.1PC

90PC/11580H&amp;S REGISTRATION

## WORKSHEET

DATE: 9-30-92 "A" NUMBER C32166

RESIDENCE OF PERSON FINGERPRINTED

8 Ash Field Ave Pomona Ca 91767

OCCUPATION

Maintenance

SCARS AND MARKS &amp; TAT

None

AMPUTATION

VEHICLE: LICENSE &amp; DESCRIPTION

ALIASES

Michael Pregnant  
Michael Craig Sneaz  
Meyers, Michael CraigSEX MALE  
RACE BLACK

HT. 5'11" WT. 172

DATE OF BIRTH 6-22-62

HAIR BR EYES BR

CONTRIBUTOR'S NO

14777

PLACE OF BIRTH

L.A. Ca.

CITIZENSHIP

U.S.

REGISTRATION IN 290 PC  
CONFORMANCE WITH: 11580 H&S ☒

## STATEMENT OF REGISTRANT CONCERNING REASON FOR REGISTRATION

DATE OF ARREST OR DETENTION

ARRESTING AGENCY

CHARGE OR REASON FOR DETENTION

7-29-90

Pomona Police Dept Prosecution

DATE OF CONVICTION OR COMMITMENT

REASON FOR COMMITMENT OR CHARGE CONVICTED OF:

PC SECTION NO

FELONY ☒

NASC SECTION NO 11352 H&amp;S

MISDEMEANOR

TYPE OF NARCOTIC: Cocaine

DATE OF RELEASE

9-21-92

FINE—AMOUNT

SUSPENDED SENTENCE OR TIME:

YEARS 2

MONTHS

PROBATION OR PAROLE—FOR THIS OFFENSE SPECIFY CONDITIONS REQUIRING REGISTRATION

Parole Probation Officer Name and Add  
Circle one) McCrary 1955 H&S Ave  
Phone: 714 264 4455 Pomona, Ca.

EXPIRATION DATE

9-21-95

DRIVER'S LICENSE NUMBER:

None

SOCIAL SECURITY NUMBER:

536-35-4369

IN EMERGENCY NOTIFY—NAME

Snoba M. BoozE

ADDRESS

888 Ash Field Ave Pomona, Ca.

RELATIONSHIP

Mother

HAVE YOU EVER BEEN FINGERPRINTED BY THE POMONA POLICE DEPARTMENT FOR ANY REASON, i.e., ARRESTEE, PERMITTEE, PEDLER, etc.?

YES

NO

If Yes, When?

Strongarm Robbery 2-80

EMPLOYER NAME AND ADDRESS: None

NATURE OF EMPLOYMENT:

M. C. Prusella  
(SIGNATURE OF REGISTRANT)

## RECORD BUREAU INFORMATION

DATE/TIME RECORD CHECK

9/30/92 1500hrs: M.  
Month Day Year Time

COMPLETED BY

R. Perez  
(Signature)

WHO MUST REGISTER 290 PC: Any person determined to be a mentally disordered sex offender or convicted under any of the following statutes: Penal Code Sections 220 (Assault with intent to commit rape or infamous crime against nature), 266, 267, 268, 285, 288, 288a, 647a.1, 261.2, 261.3, 647(d), 314.1, 314.2 and 272 (if offense involved lewd and lascivious conduct). 702 W & I Code if offense involved lewd and lascivious conduct and subject was convicted prior to Sept. 15, 1961, when section was recodified to 272 PC. 311.1 and 311.2 PC if convicted prior to Sept. 15, 1961, when section was recodified to 314.1 and 314.2 PC.

11590 H & S Code: Any person convicted, discharged, or paroled from a penal institution where he was confined because of conviction of any of the following statutes: Health & Safety Code 11350, 11351, 11352, 11353, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11368, 11350. This section does not apply to a misdemeanor conviction under Section 11357, or a conviction under Section 11350 involving marijuana.



POMONA PAROLE UNIT

TIME:

Aug 11, 94

9:35 No.003 P.05

CALIFORNIA DEPARTMENT OF CORRECTIONS

## F A C E S H E E T

PAROLE AND COMMUNITY SERVICES DIVISION

08/12/1994

Page: 1

CDC #: C32166

State: CA

Class: MS

Status: Active

Last: MYERS

First: MICHAEL

Middle: CRAIG

MONIKER(S)

Program Date:

Custody Days:

N Type:

Offense Code:  
H11352(A)Description:  
TRANS/SELL CSControlling  
Y

## SPECIAL CONDITIONS

Ant: N

No Alcohol: N

Poc: N

PD : 09/21/1992

DRD : 09/21/1993

Transported:

RVkd:

CDD : 09/21/1995

Suspended :

RRD :

Discharged:

Reinstated :

Ms Override :

Date:

MDO: N

Sex Reg :

Date:

CD :

Arson Reg :

Date:

Narcotics Reg:

Date:

3058.6 PC :

Date:

USINS #:

Deport:

(DATED PHOTO)

Soc : 556-35-4369

CDL : C0241033 ( )

CII : A05407893

FBI : 256463W3

LA Name:

LA # :

DOB : 06/22/1962 POB : CA

Sex : M

Race: BLA

Hgt : 5'9"

Wgt : 172

Hair: BLK

Eyes: BRO

## PROBLEM AREAS

Narcotics:

Alcohol:

Assault :

Sex :

Other :

## VEHICLE

Year	Make	Model	Style	Class	Color1/Color2	State	License	Own?	Start Date

## MOST RECENT ADDRESS

Start Date / Map Live With / City

03/12/1993

601B5

POMONA

Street / State, Zip, Phone

888 ASHFIELD

CA 91767-

(909) 624-7734

## MOST RECENT JOB

Start Date Employer, Aware (?) / City

Street / State, Zip, Phone

CDC 1503-A

C32166 MYERS, MICHAEL

POMONA1 1424 MCCRARY, MARION

# THE CITY OF POMONA

Office of the Police Chief



*"Working Together  
Pomona's Future..."*

August 4, 2014

Michael Myers  
C32166 EW-137-Low  
P.O. Box 689  
Soledad, CA 93960-0689

RE: Request for Dispatch Information

Dear Mr. Myers:

As stated in the previous letter dated 7-3-2014, the records have been purged, therefore, this information has been destroyed and the dispatch recordings/transcripts are not archived.

This agency does not accept called calls.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely

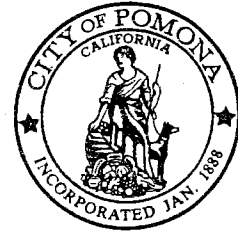


Doreen Herring  
Records Shift Supervisor

Xc: file

# THE CITY OF POMONA

Office of the Police Chief



*"Working Together  
Pomona's Future..."*

July 3, 2014

Michael Myers  
C32166 E 137L  
P.O. Box 689  
Soledad, CA 93960-689

RE: Request for Dispatch Transcript DR #95-73911

Dear Mr. Myers:

We have received your request for the above referenced Dispatch Transcript.

In accordance with the law the purge criteria established by the California Department of Justice and the City of Pomona, these dispatch recordings are no longer available, therefore no dispatch transcript is available.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Doreen Herring  
Records Shift Supervisor  
(909) 620-2159

cc: file

MINUTE ORDER  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 02/04/16

-----  
CASE NO. KA027232

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

DEFENDANT 01: MICHAEL CRAIG MYERS  
-----

INFORMATION FILED ON 06/01/95.

COUNT 01: 12021(A)(1) PC FEL

ON 02/04/16 AT 830 AM IN EAST DISTRICT DEPT EAF

CASE CALLED FOR COURT CONSIDERATION

PARTIES: WADE OLSON (JUDGE) ELIZABETH FELIX (CLERK)  
          NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

THE COURT HAS RECEIVED, READ AND CONSIDERED THE DEFENDANT'S  
MOTION TO SUPPRESS EVIDENCE.

...  
DEFENDANT'S MOTION IS DENIED FOR THE FOLLOWING REASON(S):

1) THERE IS NO SUBSTANTIAL RIGHT THE DEFENDANT IS ATTEMPTING TO  
ENFORCE.

2) DEFENDANT IS A SENTENCED PRISONER.  
...  
...

DEFENDANT IS NOTIFIED OF THE COURT'S RULING BY A COPY OF THIS  
MINUTE ORDER SENT VIA U.S. MAIL ADDRESSED AS FOLLOWS:

.  
MICHAEL C.MYERS C-32166  
CTF-C EW-137L  
P.O. BOX 689  
SOLEDAD, CA 93960

NEXT SCHEDULED EVENT:  
PROCEEDINGS TERMINATED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COURT OF APPEAL – SECOND DIST.

**FILED**

Jun 24, 2016

JOSEPH A. LANE, Clerk

V. Guzman Deputy Clerk

In re ) B 275605  
 )  
MICHAEL C. MYERS, ) (Super. Ct. No. KA027232)  
 ) (Wade Olson, Judge)  
on Habeas Corpus. )  
 )  
 )  
 )  
 )  
 )

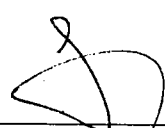
**ORDER**

THE COURT:\*

The petition for writ of habeas corpus has been read and considered.

The petition is denied for failure to demonstrate entitlement to the relief requested. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) The petition also raises arguments considered and rejected by this court in several prior petitions (including B168557, B247691). (See *In re Clark* (1993) 5 Cal.4th 750, 769-770.)

  
\* EPSTEIN, P. J.

  
WILLHITE, J.

  
MANELLA, J.

SUPREME COURT  
**FILED**

SEP 14 2016

S235959

Frank A. McGuire Clerk

Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

In re MICHAEL CRAIG MYERS on Habeas Corpus.

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; *In re Clark* (1993) 5 Cal.4th 750, 767-769; *In re Miller* (1941) 17 Cal.2d 734, 735.)

Corrigan, J., was absent and did not participate.

CANTIL-SAKAUYE

*Chief Justice*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**P.O. Box 193939  
95 Seventh Street  
San Francisco, CA. 94119-3939**

May 26, 2016

Michael C. Myers  
C-32166 E 137L  
P.O. Box 689  
Soledad, CA. 93960-689

Dear Mr. Myers:

This court is in receipt of your recent correspondence to this court. A review of the record reflects no pending cases filed by you in this court. This is a court of limited jurisdiction which means that it can only review cases which have been first filed and then decided in a U.S. District Court within this circuit.

Your correspondence is being returned to you in the event that you wish to pursue your action in the U.S. District Court. A copy of this court's rules and procedures can be downloaded at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov).

Sincerely,

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By:  
Cyntharee Powells  
Deputy Clerk  
Local Rule 27-7

PROOF OF SERVICE BY MAIL  
BY PERSON IN STATE CUSTODY  
(C.C.P. §§ 1023(A), 2015,5)

I, Michael C. Myers, declare:

I am over 18 years of age and I am party to this action. I am a resident of CORRECTIONAL TRAINING FACILITY prison, in the County of Monterey, State of California. My prison address is:

Michael C. Myers, CDCR#: C-32166  
CORRECTIONAL TRAINING FACILITY  
P.O. BOX 689, CELL #: E 137  
Soledad, CA 93960-0689

On 10-10-2016, I served the attached:

Failure To investigate Anonymous Informant.  
Failure to Subpoena witnesses on my Behalf.

on the parties herein by placing a true and correct copy thereof, enclosed in a sealed envelope with first class postage fully prepaid in the United States Mail at the hands of prison staff utilizing the system designated for legal mail at the Correctional Training Facility, Soledad, California, as per the Mailbox Rule (Rules 3(d) of the Federal Rules Governing § 2254), addressed as follows:

U.S. DISTRICT COURT  
Central District OF CALIFORNIA  
312 N. Spring ST, # G-8  
LOS Angeles, CA. 90012-4793

KAMALA D. HARRIS  
OFFICE OF THE  
Attorney General  
300 S. Spring Street  
LOS Angeles CA.  
90013

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 10-10-2016

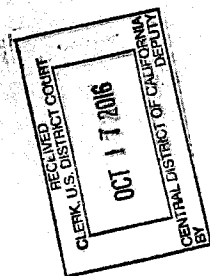
Michael C. Myers

Declarant



Michael C. Myers  
C-32166 E-1372  
P.O. Box 689  
Soledad, CA.  
93960-689

CV



U.S. District Court  
Central District of California  
312 N. Spring St. # 6-8  
Los Angeles, CA. 90012-4793

RAMIREZ

~~10-9-16~~

Jo