

COPY

Case No. S228137

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

JULIUS M. ROBINSON

Petitioner,

v.

G.W. LEWIS, Warden,

Respondent.

SUPREME COURT
FILED

AUG 19 2016

Frank A. McGuire Clerk

Deputy

On Certified Question from the United States Court of Appeals
for the Ninth Circuit Pursuant to California Rule of Court 8.548
Ninth Circuit Case No. 14-15125

PETITIONER'S OPENING BRIEF

HEATHER E. WILLIAMS, Bar No. 122664
Federal Defender

* CAROLYN M. WIGGIN, Bar No. 182732
Assistant Federal Defender

801 I Street, Third Floor
Sacramento, California 95814

Telephone: (916) 498-5700

Facsimile: (916) 498-5710

E-mail: Carolyn_Wiggin@fd.org

Attorneys for Petitioner
JULIUS M. ROBINSON

Table of Contents

Table of Authorities.....	iii
I. QUESTION PRESENTED FOR REVIEW	1
II. INTRODUCTION	1
III. STATEMENT OF THE CASE	4
A. Trial Court Proceedings.....	4
B. Direct Appeal.....	5
C. State Collateral Proceedings.....	5
1. Petition filed in the Superior Court of California, Sacramento County.....	5
2. Petition filed in the California Court of Appeal for the Third Appellate District	6
3. Petition filed in the Supreme Court of California	7
D. Federal Collateral Proceedings.....	7
1. Federal District Court	7
2. Federal Court of Appeal	8
IV. ARGUMENT	9
A. Proposed Answer to Certified Question:.....	9

B. Under California’s “Substantial Delay” Standard, an Interval of 66 Days Between the Pendency of Habeas Corpus Petitions Is Not a “Substantial Delay.”.....	10
1. California’s Noncapital Habeas Corpus Framework and Practice	10
2. California’s “Substantial Delay” Standard Regarding the Timeliness of Habeas Corpus Petitions.	16
3. Analysis of Petitions Deemed Timely by the California Courts of Appeal and this Court Shows that an Interval of 66 Days is Not a “Substantial Delay” under California Law.	22
V. CONCLUSION.....	32

Table of Authorities

Federal Cases

<i>Bui v. Hedgpeth</i> (C.D. Cal. 2007) 516 F.Supp.2d 1170	14
<i>Carey v. Saffold</i> (2002) 536 U.S. 214 [122 S.Ct. 2134, 153 L.Ed.2d 260	2
<i>Evans v. Chavis</i> (2006) 546 U.S. 189 [126 S.Ct. 846, 163 L.Ed.2d 684].....	2, 16
<i>Robinson v. Lewis</i> (9th Cir. 2015) 795 F.3d 926	<i>passim</i>
<i>Walker v. Martin</i> (2011) 562 U.S. 307	10

Federal Statutes

28 United States Code Section 2244	1
--	---

Federal Rules

United States Supreme Court Rules, Rule 13	5
--	---

State Constitutions

California Constitution, Article VI, Section 10	10
---	----

State Cases

<i>Catlin v. Superior Court</i> (2011) 51 Cal.4th 300 [120 Cal.Rptr.3d 135, 245 P.3d 860].....	11, 12
---	--------

<i>In re Alvarez</i> (2013) 222 Cal.App.4th 1064 [166 Cal.Rptr.3d 271], <i>as modified on denial of reh'g</i> (Jan. 8, 2014)	29, 30, 31
<i>In re Burdan</i> (2008) 169 Cal.App.4th 18 [86 Cal.Rptr.3d 549]	23
<i>In re Clark</i> (1993) 5 Cal.4th 750 [21 Cal.Rptr.2d 509, 855 P.2d 729].....	17, 18
<i>In re Crockett</i> (2008) 159 Cal.App.4th 751 [71 Cal.Rptr.3d 632]	20
<i>In re Douglas</i> (2011) 200 Cal.App.4th 236, [132 Cal.Rptr.3d 582]	22
<i>In re Efstathiou</i> (2011) 200 Cal.App.4th 725 [133 Cal.Rptr.3d 34]	27, 31
<i>In re Fratus</i> (2012) 204 Cal.App.4th 1339 [139 Cal.Rptr.3d 660]	27, 28, 31
<i>In re Furnace</i> (2010) 185 Cal.App.4th 649 [110 Cal.Rptr.3d 820]	26, 31
<i>In re Harris</i> (1993) 5 Cal.4th 813 [21 Cal.Rptr.2d 373, 855 P.2d 391], <i>as modified</i> (Sept. 30, 1993), <i>reh'g denied and opinion modified</i> (Sept. 30, 1993)).....	17, 18
<i>In re Hillery</i> (1962) 202 Cal.App.2d 293 [20 Cal.Rptr. 759, 760]	6, 11
<i>In re Huddleston</i> (1969) 71 Cal.2d 1031 [80 Cal.Rptr. 595, 458 P.2d 507]	19
<i>In re Johnson</i> (2009) 176 Cal.App.4th 290 [97 Cal.Rptr.3d 692], <i>as modified</i> (Aug. 12, 2009).....	25, 31

<i>In re Lucero</i> (2011) 200 Cal.App.4th 38 [132 Cal.Rptr.3d 499]	17, 19
<i>In re Martinez</i> (2013) 216 Cal.App.4th 1141 [157 Cal.Rptr.3d 701], <i>as modified</i> (June 18, 2013)	28, 31
<i>In re Moore</i> (2005) 133 Cal.App.4th 68 [34 Cal.Rptr.3d 605]	24, 31
<i>In re Nunez</i> (2009) 173 Cal.App.4th 709 [93 Cal.Rptr.3d 242], <i>as modified</i> (May 27, 2009)	17, 19
<i>In re Ramirez</i> (2001) 89 Cal.App.4th 1312 [108 Cal.Rptr.2d 229], <i>as modified on denial of reh'g</i> (July 2, 2001)	11
<i>In re Reno</i> (2012) 55 Cal.4th 428 [146 Cal.Rptr.3d 297, 328, 283 P.3d 1181, 1207], <i>as modified on denial of reh'g</i> (Oct. 31, 2012)	16, 18, 21, 22
<i>In re Richardson</i> (2011) 196 Cal.App.4th 647 [126 Cal.Rptr.3d 720], <i>as modified</i> (June 29, 2011), <i>as modified on denial of reh'g</i> (July 12, 2011)	26, 31
<i>In re Robbins</i> (1998) 18 Cal.4th 770 [77 Cal.Rptr.2d 153, 959 P.2d 311]	17, 18, 20, 21
<i>In re Sanders</i> (1999) 21 Cal.4th 697 [87 Cal.Rptr.2d 899, 981 P.2d 1038]	17
<i>In re Steele</i> (2004) 32 Cal.4th 682, [10 Cal.Rptr.3d 536, 85 P.3d 444]	6
<i>In re Walker</i> (2007) 147 Cal.App.4th 533 [54 Cal.Rptr.3d 411], <i>as modified on denial of reh'g</i> (Mar. 6, 2007)	24, 31
<i>In re White</i> (2008) 163 Cal.App.4th 1576 [79 Cal.Rptr.3d 195]	25, 31

People v. Duvall (1995) 9 Cal.4th 464
 [37 Cal.Rptr.2d 259, 886 P.2d 1252]..... 15

People v. Robinson (Cal. Ct. App., Feb. 8, 2011, No. C061862)
 [2011 WL 398026 (unpublished)] 4, 5

People v. Robinson,
 California Supreme Court Case Number S191254 5

People v. Willover (2016) 248 Cal.App.4th 302
 [203 Cal.Rptr.3d 384], *review filed* (July 22, 2016)..... 30, 31

Pulido v. Superior Court (2013) 221 Cal.App.4th 1403
 [165 Cal.Rptr.3d 375] 29, 31

State Statutes

California Government Code Section 68662..... 13

California Penal Code Section 186.22..... 4

California Penal Code Section 187..... 4

California Penal Code Section 246..... 4

California Penal Code Section 664..... 4

California Penal Code Section 1054.9..... 12

California Penal Code Section 1475..... 15

California Penal Code Section 1506..... 12

California Penal Code Section 12022.53..... 4

California Penal Code Section 12034..... 4

State Rules

California Rules of Court, rule 4.551	11, 13
California Rules of Court, rule 8.304	16
California Rules of Court, rule 8.380	11, 15, 16
California Rules of Court, rule 8.384	11
California Rules of Court, rule 8.501	16
California Rules of Court, rule 8.504	16
California Supreme Court Policies Regarding Cases Arising From Judgments of Death, Standard 1-1 [<i>As amended effective Sept. 19, 1990, Jan. 22, 1998, July 17, 2002, and Nov. 30, 2005</i>].....	18

State Regulations

California Code of Regulations, Title 15, Section 3122	14
California Code of Regulations, Title 15, Section 3123	14

Other Authorities

Emily Garcia Uhrig, <i>The Sacrifice of Unarmed Prisoners to Gladiators: The Post-Aedpa Access-to-the-Courts Demand for A Constitutional Right to Counsel in Federal Habeas Corpus</i> (2012) 14 U. Pa. J. Const. L. 1219.....	13
Ken Strutin, <i>Litigating from the Prison of the Mind: A Cognitive Right to Post-Conviction Counsel</i> (2016) 14 Cardozo Pub. L. Pol’y & Ethics J. 343	14

I. QUESTION PRESENTED FOR REVIEW

The question presented for review is:

When a California court denies a claim in a petition for writ of habeas corpus, and the petitioner subsequently files the same or a similar claim in a petition for writ of habeas corpus directed to the original jurisdiction of a higher court, what is the significance, if any, of the period of time between the earlier petition's denial and the subsequent petition's filing (66 days in this case) for the purpose of determining the subsequent claim's timeliness under California law?

Order dated May 25, 2016.

II. INTRODUCTION

The United States Court of Appeals for the Ninth Circuit asked this Court to provide guidance regarding the rules governing the timeliness of a noncapital habeas corpus petition filed in a California appellate court after denial of a petition by a lower California court.

In federal court, a habeas corpus petitioner generally has one year from the date a state conviction becomes final to file a petition for a writ of habeas corpus. (28 U.S.C. § 2244(d)(1)(A)). This statute of limitations is tolled during the time in which a properly filed habeas corpus petition is pending in state court. (28 U.S.C. § 2244(d)(2)).

In the common scenario in which a California prisoner chooses to file

a series of original petitions in the California Superior Court, then in the California Court of Appeal, and finally in the California Supreme Court, there are “intervals” or “gaps” of time between denial of a petition and filing of the next petition. The United States Supreme Court has held that as long as those intervals are not so lengthy that a petition is untimely under state law, then the petitioner is entitled to tolling of the federal statute of limitations during the intervals as well as during the periods in which the petitions were pending in a California court. (*Carey v. Saffold* (2002) 536 U.S. 214, 225 [122 S.Ct. 2134, 2141, 153 L.Ed.2d 260]). Thus in federal court, the question of whether an interval between state petitions was so lengthy that a petition was untimely can decide whether a federal petition will be dismissed as untimely or survive for a decision on the merits.

In its 2006 decision in *Evans v. Chavis* (2006) 546 U.S. 189 [126 S.Ct. 846, 852, 163 L.Ed.2d 684], the United States Supreme Court held that when California courts deny a habeas corpus petition without giving a clear indication as to whether the petition was timely or not, the federal court analyzing tolling of the statute of limitations must “examine the delay in each case and determine what the state courts would have held in respect to timeliness.” (*Id.* at p. 198). In

carrying out this task over the last decade, federal courts “have struggled to discern how California courts would rule on the timeliness issue,” and have settled on varying assumptions about California’s timeliness rules in the context of noncapital habeas corpus petitions filed in appellate courts. (*Robinson v. Lewis* (9th Cir. 2015) 795 F.3d 926, 930 (hereafter *Robinson*)). In the present case, the federal district court dismissed Mr. Robinson’s federal petition as untimely on the basis of its conclusion that a 66-day interval between the denial of a petition by a California Superior Court and the filing of a petition raising the same claims in a California Court of Appeal was unreasonable under California law. (*Id.* at p. 934).

As argued below, California precedent, and observation of the behavior of California appellate courts, reveals that a 66-day interval between denial of a habeas corpus petition by a California court and the filing of a new petition raising similar claims in the California Court of Appeal or California Supreme Court is not considered a “substantial delay.”

III. STATEMENT OF THE CASE

A. Trial Court Proceedings

Mr. Robinson was tried in the Superior Court of California, Sacramento County, and convicted of two counts of attempted willful, deliberate and premeditated murder (Pen. Code, §§ 187, 664), malicious discharge of a firearm at an inhabited dwelling causing great bodily injury (Pen. Code, §§ 246, 12022.53, subd. (d)), and malicious discharge of a firearm from a motor vehicle causing great bodily injury (Pen. Code, §§ 12034, subd. (d), 12022.53, subd. (d)). In addition, the jury found true multiple gun use enhancement allegations and that all the crimes were committed with specific intent to promote criminal conduct by a street gang. (Pen. Code, § 186.22, subd. (b)(1)). After the court found prior prison term and prior conviction allegations to be true, Mr. Robinson was sentenced to an indeterminate term of 205-years-to-life, plus a determinate term of 17 years. (*People v. Robinson* (Cal. Ct. App., Feb. 8, 2011, No. C061862) [2011 WL 398026, at *1] (unpublished)).

B. Direct Appeal

Mr. Robinson filed a direct appeal to the California Court of Appeal for the Third Appellate District and raised numerous issues related to the trial and sentencing. On February 8, 2011, the Court of Appeal affirmed the conviction but modified the judgment to correct two sentencing errors. (*Robinson*, 2011 WL 398026, at *16).

Mr. Robinson filed a petition for review in this Court. (*People v. Robinson*, Case Number S191254). This Court denied the petition for review on May 11, 2011. The deadline for Mr. Robinson to seek *certiorari* review with the United States Supreme Court expired on August 9, 2011. (U.S. Supreme Ct. Rules, rule 13). Mr. Robinson did not file a petition for *certiorari* in the United States Supreme Court.

C. State Collateral Proceedings

1. Petition filed in the Superior Court of California, Sacramento County

On November 12, 2011, Mr. Robinson filed a petition for a writ of habeas corpus in the California Superior Court for Sacramento County. (*Robinson, supra*, 795 F.3d at p. 933). On January 19, 2012, the Superior Court denied Mr. Robinson's petition. (*Ibid.*)

2. Petition filed in the California Court of Appeal for the Third Appellate District

On March 26, 2012, 66 days after the Superior Court denied his petition, Mr. Robinson filed a petition for a writ of habeas corpus in the California Court of Appeal for the Third Appellate District.

(*Robinson, supra*, 795 F.3d at p. 933). The California Court of Appeal denied the petition on April 5, 2012, with citations to *In re Steele* (2004) 32 Cal.4th 682, 692 [10 Cal.Rptr.3d 536, 543, 85 P.3d 444, 449],¹ and *In re Hillery* (1962) 202 Cal.App.2d 293[20 Cal.Rptr. 759, 760].² (*Robinson, supra*, 795 F.3d at p. 933). Because the California Court of Appeal neither cited cases regarding timeliness

¹ This citation likely refers to *In re Steele's* holding that “a reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court.” (*In re Steele* (2004) 32 Cal.4th 682, 692 [10 Cal.Rptr.3d 536, 543, 85 P.3d 444, 449]). Although Mr. Robinson had in fact filed a petition in the Superior Court, this may not have been clear to the Court of Appeal.

² This citation likely refers to *Hillery's* holding that a California Court of Appeal “has discretion to refuse to issue the writ as an exercise of original jurisdiction on the ground that application has not been made therefor in a lower court in the first instance.” (*Application of Hillery* (1962) 202 Cal.App.2d 293, 294 [20 Cal.Rptr. 759, 760]). Again, while Mr. Robinson in fact filed his initial petition in Superior Court, this may not have been clear to the Court of Appeal.

nor discussed the timeliness of Mr. Robinson's petition, there is no indication that it concluded the petition was untimely.

3. Petition filed in the Supreme Court of California

On July 6, 2012, 91 days after the California Court of Appeal's decision, Mr. Robinson constructively filed a habeas corpus petition in this Court. (*Robinson, supra*, 795 F.3d at p. 933). It was filed by this Court on August 6, 2012. (Case No. S204534, Docket.)³ This Court denied the petition without comment or citation to authority on October 24, 2012. (*Ibid.*).

D. Federal Collateral Proceedings

1. Federal District Court

Mr. Robinson filed his federal petition for a writ of habeas corpus in the United States District Court for the Eastern District of California on March 13, 2013. (*Robinson, supra*, 795 F.3d at p. 933). The federal court denied the petition as untimely based on its determination that the 66-day period between the denial of Mr. Robinson's California Superior Court petition and the filing date of his Court of Appeal petition was unreasonable, and therefore Mr.

³ Available at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2021663&doc_no=S204534 (last accessed July 20, 2016).

Robinson was not entitled to tolling of the statute of limitations for this period. (*Robinson, supra*, 795 F.3d at p. 934). The court also concluded that the 91-day period between the denial of Mr. Robinson’s California Court of Appeal petition and the filing date of his petition in this Court was unreasonable and therefore the federal statute of limitations was not tolled during this period either. (*Ibid.*).

2. Federal Court of Appeal

Mr. Robinson appealed to the United States Court of Appeals for the Ninth Circuit. That Court only considered “the question whether [Mr.] Robinson is entitled to tolling for the 66–day interval between the California Superior Court denial of habeas relief and his filing a new petition in the California Court of Appeal.” (*Robinson, supra*, 795 F.3d at p. 934). The Ninth Circuit determined that it needed guidance from this Court as to “the permissible length of an unjustified delay,” between the denial of a petition by a California court and the filing of a petition challenging the same judgment in the next highest appellate court. (*Ibid.*). It therefore certified the following question to this Court:

When a state habeas petitioner has no good cause for delay, at what point in time is that state prisoner’s petition, filed in a California court of review to challenge

a lower state court's disposition of the prisoner's claims, untimely under California law; specifically, is a habeas petition untimely filed after an unexplained 66-day delay between the time a California trial court denies the petition and the time the petition is filed in the California Court of Appeal?

(*Robinson, supra*, 795 F.3d at p. 928). This Court has restated the question to read:

When a California court denies a claim in a petition for writ of habeas corpus, and the petitioner subsequently files the same or a similar claim in a petition for writ of habeas corpus directed to the original jurisdiction of a higher court, what is the significance, if any, of the period of time between the earlier petition's denial and the subsequent petition's filing (66 days in this case) for the purpose of determining the subsequent claim's timeliness under California law?

Order dated May 25, 2016.

IV. ARGUMENT

A. Proposed Answer to Certified Question:

When a California court denies a petition for a writ of habeas corpus, and the petitioner subsequently files a habeas corpus petition containing the same or similar claims in a higher California court, the time period between the earlier petition's denial and filing of the next petition is relevant to the question of whether the petition was filed after "substantial delay." If "substantial delay" did occur, the court

will consider whether (a) there is good cause for the delay, or (b) an exception to the bar of untimeliness applies. A 66-day period between the date a lower court petition is denied and a petition raising the same claim is filed in a higher court is not a “substantial delay.”

B. Under California’s “Substantial Delay” Standard, an Interval of 66 Days Between the Pendency of Habeas Corpus Petitions Is Not a “Substantial Delay.”

1. California’s Noncapital Habeas Corpus Framework and Practice

California has a unique procedural framework for post-conviction collateral attacks on criminal judgments. “While most States set determinate time limits for collateral relief applications,”⁴ California has chosen to adopt a more flexible, equity-based system. Several features of this system are relevant to the certified question.

First, all California courts have original jurisdiction in habeas corpus proceedings. (Cal. Const., art. VI, § 10). Generally, after direct review of a criminal judgment is complete, noncapital habeas petitioners file their first habeas corpus petition in the Superior Court for the county in which they were convicted. While a petitioner could theoretically file an initial petition in the California Court of Appeal

⁴ *Walker v. Martin* (2011) 562 U.S. 307, 311.

or this Court, if the petitioner bypasses a lower California court, he or she must justify that choice.⁵ The higher court has “discretion to refuse to issue the writ as an exercise of original jurisdiction on the ground that application has not been made therefor in a lower court in the first instance.” (*In re Ramirez* (2001) 89 Cal.App.4th 1312, 1316 [108 Cal.Rptr.2d 229], *as modified on denial of reh’g* (July 2, 2001) [quoting *In re Hillery, supra*, 202 Cal.App.2d at p. 294]). Thus rules and precedent encourage a habeas petitioner to first file a petition in the Superior Court, then, if unsuccessful, proceed to the Court of Appeal, and finally, if unsuccessful, proceed to this Court.

Second, as this Court has recognized, noncapital habeas petitioners have no incentive to delay presentation and litigation of their petitions. In *Catlin v. Superior Court* (2011) 51 Cal.4th 300, 307 [120 Cal.Rptr.3d 135, 141, 245 P.3d 860, 865], this Court reversed a decision by the Court of Appeal holding that a petitioner’s

⁵ Persons proceeding *pro se* must file their petitions using Judicial Council Form MC-275, “Petition for Writ of Habeas Corpus.” (Cal. Rules of Court, rules 4.551 and 8.380). That form includes question number 18, which asks “If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court.” Attorneys preparing petitions are not required to use Form MC-275 but must include the information requested in MC-275 in the petition. (Cal. Rules of Court, rules 4.551 and 8.384).

postconviction motion for discovery under California Penal Code

Section 1054.9 was untimely. This Court observed that

Because inmates sentenced to life imprisonment without possibility of parole are imprisoned and are seeking release, they have no incentive to engage in delaying tactics that would prolong their imprisonment. By contrast, for inmates sentenced to death, delay may postpone execution. (*See In re Clark, supra*, 5 Cal.4th at p. 796, fn. 31, 21 Cal.Rptr.2d 509, 855 P.2d 729 [“the state has a compelling need for rules that require timely presentation of challenges to the judgments in capital cases where petitioners, unlike prisoners who are not under sentence of death, have a strong incentive for delay”].)

(*Catlin*, 51 Cal.4th 300, 308 n.3 [120 Cal.Rptr.3d 135, 142, 245 P.3d 860, 866]).

Third, whereas the respondent can appeal a Superior Court’s *grant* of a writ of habeas corpus to the California Court of Appeal, in proceedings arising from a criminal case, a petitioner whose petition is denied or dismissed at the Superior Court level cannot appeal to the California Court of Appeal. (Pen. Code, § 1506). Instead, to proceed from Superior Court to the Court of Appeal or this Court, the petitioner must file an original petition in the higher court. If the California Court of Appeal denies or dismisses a petition, the petitioner can either file an original habeas corpus or a petition for review in this Court. (Pen. Code, § 1506).

Fourth, unlike indigent petitioners in capital cases,⁶ indigent petitioners in noncapital cases have no right to appointed counsel for the purposes of state postconviction proceedings.⁷ Scholars have recognized “the high rates of illiteracy and mental health problems that plague American prison and jail populations.” (Emily Garcia Uhrig, *The Sacrifice of Unarmed Prisoners to Gladiators: The Post-Aedpa Access-to-the-Courts Demand for A Constitutional Right to Counsel in Federal Habeas Corpus* (2012) 14 U. Pa. J. Const. L. 1219, 1252). Moreover, in contrast to “those niceties of practice that lawyers take for granted,” such as training, adequate time to conduct legal research, and access to complete law libraries and electronic databases,

inmates must contend with prison rules, inadequate libraries, and unresponsive or uncooperative information sources in the outside world. Thus, meeting a deadline, obtaining a witness affidavit, consulting with an expert, or acquiring a hard to find piece of research is well-nigh impossible. They have to operate in confinement, where they contend with dangerous and sometimes extreme

⁶ See Cal. Gov. Code, § 68662.

⁷ Only if a Superior Court issues an Order to Show Cause, *i.e.* determines that the petitioner has made a *prima facie* showing that he or she is entitled to relief, is the Superior Court required to appoint counsel for any unrepresented person who desires but cannot afford counsel. (Cal. Rules of Court, rule 4.551(c)(2)).

conditions that are part and parcel of the daily pressures that comprise prison life.

(Ken Strutin, *Litigating from the Prison of the Mind: A Cognitive Right to Post-Conviction Counsel* (2016) 14 *Cardozo Pub. L. Pol'y & Ethics J.* 343, 355).

Fifth, because California has not established explicit deadlines for filing noncapital habeas corpus petitions, prisoners pursuing such relief are not deemed “Priority Legal Users” by the California Department of Corrections and Rehabilitation. (Cal. Code Regs., tit. 15, § 3122, subd. (b)(1)). Rather, they are deemed “General Legal Users” and, as such, “*may* receive a minimum of 2 hours per calendar week of requested physical law library access, *as resources are available.*” (Cal. Code Regs., tit. 15, § 3123, subd. (b) [emphasis added]). Of course a prisoner’s work schedule, prison-wide lockdowns, and the policies of an individual prison and its staff members could mean that a prisoner preparing a state habeas corpus petition receives virtually no access to the prison law library, impeding his or her ability to conduct research and make the required copies for filing a state habeas petition. (See, e.g., *Bui v. Hedgpeth* (C.D. Cal. 2007) 516 F.Supp.2d 1170, 1175 [describing California state prisoner’s inability to access California State Prison-

Sacramento's prison law library to make photocopies of the habeas corpus petition he prepared to file in the California Supreme Court for a period of approximately four months]).

Finally, although most noncapital habeas petitioners do not have counsel and are imprisoned when they prepare and file petitions, the requirements for petitions filed in the California Court of Appeal and this Court are extensive. The petition must contain "a brief statement" explaining all prior applications for habeas corpus relief and "must contain of all proceedings had therein, or in any of them, to and including the final order or orders made therein, or in any of them, on appeal or otherwise." (Cal. Pen. Code, § 1475). The petition must also "include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations." (*People v. Duvall* (1995) 9 Cal.4th 464, 474 [37 Cal.Rptr.2d 259, 265, 886 P.2d 1252, 1258]). When filing the petition, a petitioner filing in the California Court of Appeal must submit the original petition and one set of supporting documents. (Cal. Rules of Court, rule 8.380(c)). A petitioner filing in this Court must file an original and ten copies of the petition as well as two copies of supporting documents

accompanying the petition. (*Ibid.*). For all of these reasons, contrary to assumptions expressed in some federal cases,⁸ filing an original habeas corpus petition in a California appellate court is considerably more labor-intensive than simply filing a notice of appeal.

2. California’s “Substantial Delay” Standard Regarding the Timeliness of Habeas Corpus Petitions.

Most of this Court’s opinions regarding the timeliness of habeas corpus petitions have been issued in capital cases.⁹ However, this

⁸ For example, in *Evans v. Chavis* (2006) 546 U.S. 189, 201 [126 S.Ct. 846, 854, 163 L.Ed.2d 684], the United States Supreme Court assumed that California courts would not consider an “unjustified or unexplained 6-month filing delay” between the date the California Court of Appeal denied a petition and the date a new petition was filed in this Court reasonable. This assumption arose from the observation that “[s]ix months is far longer than the “short period[s] of time,” 30 to 60 days, that most States provide for filing an appeal to the state supreme court.” (*Ibid.*) However, as described above, preparation and filing of an original habeas corpus petition is far more involved than filing a notice of appeal. (*See* Cal. Rules of Court, rule 8.304 [notice of appeal in criminal case adequate if it identifies the particular judgment or order being appealed]). Even a petition for review to this Court, which is available to habeas petitioners initiating review in this Court but not in the Court of Appeal, is more involved than a one page notice of appeal. (Cal. Rules of Court, rules 8.501 and 8.504 [petition for review in California Supreme Court requires statement of issues and attachments]).

⁹ *See In re Reno* (2012) 55 Cal.4th 428, 459 [146 Cal.Rptr.3d 297, 328, 283 P.3d 1181, 1207], *as modified on denial of reh'g* (Oct. 31, 2012); *In re Robbins* (1998) 18 Cal.4th 770, 780 [77 Cal.Rptr.2d

Court has clarified that it “enforce[s] time limits on the filing of petitions for writs of habeas corpus in noncapital cases . . .” (*In re Sanders* (1999) 21 Cal.4th 697, 703 [87 Cal.Rptr.2d 899, 903-04, 981 P.2d 1038, 1042]). Lower California appellate courts rely on this Court’s holdings regarding the timeliness of capital habeas corpus petitions to analyze the timeliness of noncapital habeas corpus petitions. (See, e.g., *In re Lucero* (2011) 200 Cal.App.4th 38, 44 [132 Cal.Rptr.3d 499, 504]; *In re Nunez* (2009) 173 Cal.App.4th 709, 723 [93 Cal.Rptr.3d 242, 252], *as modified* (May 27, 2009)). California courts typically signify when they are imposing the bar of untimeliness as opposed to denying a petition on the merits or imposing a different procedural bar. See *Robbins, supra*, 18 Cal.4th at p. 815, fn. 34 (describing this Court’s practice of signifying the basis for denial or dismissal of habeas corpus petitions within orders).

This Court has established a safe harbor for habeas petitions to be deemed timely in the capital context.¹⁰ No analogous deadlines or

153, 959 P.2d 311]; *In re Clark* (1993) 5 Cal.4th 750, 765, fn. 5 [21 Cal.Rptr.2d 509, 855 P.2d 729]; *In re Harris* (1993) 5 Cal.4th 813, 828 [21 Cal.Rptr.2d 373, 379, 855 P.2d 391, 397], *as modified* (Sept. 30, 1993), *reh'g denied and opinion modified* (Sept. 30, 1993).

¹⁰ Under this Court’s standards for capital cases, a habeas petition is presumptively timely if filed within 180 days of the final

safe harbor exists in the noncapital context. Rather, a habeas corpus petition “should be filed as promptly as the circumstances allow, and the petitioner must point to particular circumstances sufficient to justify substantial delay.” (*Clark, supra*, 5 Cal.4th at p. 765 fn.5 [internal citations and quotations omitted]; *Harris, supra*, 5 Cal.4th at p. 828 [“a petitioner seeking relief on habeas corpus need only file a petition without substantial delay, or if delayed, adequately explain the delay.”]). “Substantial delay” is “measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim.” (*Reno, supra*, 55 Cal.4th at 460 [internal quotations and citations omitted]). If a petitioner substantially delayed filing a habeas corpus petition, the court then asks whether (a) “good cause” exists for any substantial delay, or (b) one of the exceptions to the bar of untimeliness applies. (*Robbins, supra*, 18 Cal.4th at p. 779 [77 Cal.Rptr.2d at p. 159, 959 P.2d at p 317]).

due date for the reply brief in the direct appeal or within 24 months of the appointment of separate habeas counsel. (See Cal. Supreme Court Policies Regarding Cases Arising From Judgments of Death, std. 1-1 [As amended effective Sept. 19, 1990, Jan. 22, 1998, July 17, 2002, and Nov. 30, 2005]).

There is little case law on precisely what time periods constitute “substantial delay.” In what might be the only opinion this Court has published regarding the timeliness of a noncapital habeas corpus petition, this Court held that where it rendered decisions that formed the basis of the petitioner’s claim in January of 1966, and the petitioner filed his initial petition in the summer of 1968, “[t]he lapse of two and one-half years does not become unreasonable under the present circumstances; in any event, defendant’s delay primarily worked to his own disadvantage.” (*In re Huddleston* (1969) 71 Cal.2d 1031, 1034 [80 Cal.Rptr. 595, 596, 458 P.2d 507, 508]). The California Court of Appeal has indicated that in the very common circumstance in which a *pro se* prisoner prepares his or her own petition, the prisoner’s status as a “layperson with limited access to a prison law library that does not receive newly published cases for several months,” can justify a prisoner taking ten months after the basis of a claim becomes available to file his petition. (*Lucero*, *supra*, 132 Cal. Rptr. 3d at p. 504). Even in a counseled case, a period of six months between the date the basis for a claim was known and the date a petition was filed was not deemed a “significant delay” by the California Court of Appeal. (*Nunez*, *supra*, 173 Cal.App.4th at p. 723

[93 Cal.Rptr.3d at p. 253]). Admittedly these cases pertain to the period of time before a petitioner files an initial petition, and not intervals between the pendency of petitions raising the same or similar claims, but the California Court of Appeal has also held that in a counseled case, an interval of five months between pendency of petitions did not make a petition filed in the Court of Appeal untimely. (*In re Crockett* (2008) 159 Cal.App.4th 751, 758 [71 Cal.Rptr.3d 632, 636]).

Turning back to this Court's precedent, in *Robbins*, this Court determined that when a petitioner learned of facts supporting a subclaim in his petition in April or May of 1995, obtained a declaration supporting the facts in July of 1995, and filed his petition on September 18 of 1995, he had satisfied his burden of establishing that presentation of his claim in a habeas corpus petition "was not substantially delayed." (*Robbins, supra*, 18 Cal.4th at p. 795). This Court also held that subclaims were timely when petitioner learned of supporting facts in "mid-1995" and included the sub-claim in the petition filed on September 18, 1995. As stated by this Court, petitioner filed the subclaim

reasonably promptly after petitioner obtained the factual and legal basis for the subclaim in mid-1995.

Accordingly, we conclude that petitioner has satisfied his burden of establishing that this subclaim was not substantially delayed. Thus, this subclaim is not procedurally barred as untimely.

(*Id.* at p. 799). This Court held the same for a subclaim in which the information was discovered in mid-May, 1995, and the petition was filed on September 18, 1995. (*Id.* at p. 803). *Robbins* indicates that even in a counseled habeas corpus case,¹¹ a time gap of four months between discovery of a claim and presentation of that claim in a habeas corpus petition is not “substantial delay.”

In *Reno*, this Court held that while the majority of a petitioner’s habeas claims were untimely, two claims that “attack the efficacy of this court’s prior review” were “not untimely.” (*Reno*, *supra*, 55 Cal.4th at p. 476). The facts giving rise to that claim would have been known at the conclusion of this Court’s initial review—June of 1995—and it was not presented in the second state habeas corpus petition at issue in *Reno* until 2004. (*Id.* at p. 448). Even if one only counts the time between the date that counsel was appointed to

¹¹ Because the petitioner in *Robbins* was sentenced to death, he had a statutory right to counsel for his habeas corpus petition. By contrast, Mr. Robinson, who was not sentenced to death did not have a right to court-appointed counsel in his habeas corpus case and acted *pro se* in his state habeas proceedings.

prepare and file the second state habeas corpus petition¹² and the date that petition was filed¹³ a time period of some two years was not regarded as a “substantial delay” that had to be justified.

At the other end of the spectrum, where a noncapital habeas corpus petitioner reasonably should have known of the basis for his claim by December of 1997 but did not file his petition in Superior Court until 2010, the petition was filed with “substantial delay” and therefore procedurally barred. (*In re Douglas* (2011) 200 Cal.App.4th 236, 244 [132 Cal.Rptr.3d 582, 587]).

3. Analysis of Petitions Deemed Timely by the California Courts of Appeal and this Court Shows that an Interval of 66 Days is Not a “Substantial Delay” under California Law.

An examination of the published decisions of the California Court of Appeal and this Court in noncapital habeas corpus cases between January 1, 2000, and the present, accompanied by an examination of the intervals that preceded the petitions at issue, reveals that intervals of longer than 66 days between the pendency of petitions does not result in dismissal of the petitions as untimely, or

¹² September of 2002. (*Reno, supra*, 55 Cal.4th at p. 447).

¹³ May 10, 2004. (*Reno, supra*, 55 Cal.4th at 447).

even a discussion suggesting there was a “substantial delay” that required justification. This overview of cases is limited by the fact that it only considers published decisions, and it only examines the intervals between pendency of petitions where that information is available on an electronic database, but it gives some sense of what time periods are *not* deemed “substantial delay” in this context.¹⁴ Equally importantly, it sheds light on what a *pro se* prisoner would be able to glean about noncapital habeas corpus timeliness rules by reviewing published California cases. Following the description of these cases, Mr. Robinson presents a table giving the mean and median intervals between pendency of petitions. As noted none of the

¹⁴ This list was generated by examining all published opinions available on Westlaw that were issued between January 1, 2000, and August 5, 2016, by the California Court of Appeal and this Court that contain the phrase “habeas corpus.” The list was narrowed to include only cases actually involving noncapital habeas corpus petitions in which it appeared that a prior petition had been filed in a lower California Court and then a new petition raising similar claims was filed in the higher court. In addition, the list only includes cases in which the date in which the prior petition was denied could be found on either Westlaw, Lexis, or a court’s website. Mr. Robinson excluded from the list habeas corpus petitions challenging a decision by the Board of Parole Hearings because at least one California court has held that traditional concerns regarding the timeliness of habeas corpus petitions “do not apply where a life prisoner challenges a parole decision.” (*In re Burdan* (2008) 169 Cal.App.4th 18, 31 [86 Cal.Rptr.3d 549, 558]).

intervals that preceded these petitions were described as “substantial delay” by California appellate courts.

- *In re Moore* (2005) 133 Cal.App.4th 68, 71 [34 Cal.Rptr.3d 605, 607]: The petition Mr. Moore filed in the San Diego Superior Court raising an ineffective assistance of counsel claim was denied on November 23, 2004. *Id.* Mr. Moore then filed a new petition in the Court of Appeal on December 17, 2004. (*Id.* at p. 72). The time gap of 24 days between petitions was not deemed “substantial delay.”
- *In re Walker* (2007) 147 Cal.App.4th 533, 536 [54 Cal.Rptr.3d 411, 413], *as modified on denial of reh'g* (Mar. 6, 2007). In 2003, Ms. Walker filed a petition for a writ of habeas corpus in the Los Angeles Superior Court that raised an ineffective assistance of counsel claim. The petition was denied on April 1, 2004. (*Id.* at p. 544). Ms. Walker then filed a new petition in the California Court of Appeal on April 28, 2006. (*Id.* at p. 545). The Court of Appeal did not treat the interval of two years and 27 days as a “substantial delay.”

- *In re White* (2008) 163 Cal.App.4th 1576, 1579 [79 Cal.Rptr.3d 195, 196]. Mr. White filed a petition for a writ of habeas corpus raising an ineffective assistance of counsel claim in the Fresno County Superior Court and it was denied on July 21, 2007. (*Ibid.* at p. 196). Mr. White then filed a new petition in the Court of Appeal on December 10, 2007. (*Ibid.*). The 142-day period between petitions was not deemed a “substantial delay.”
- *In re Johnson* (2009) 176 Cal.App.4th 290, 296 [97 Cal.Rptr.3d 692, 697], *as modified* (Aug. 12, 2009). Mr. Johnson filed a petition for a writ of habeas corpus challenging his prison disciplinary conviction in the Kern County Superior Court and it was denied in April of 2008. (*Ibid.*). He filed a new petition in the California Court of Appeal on August 4, 2008.¹⁵ The interval of some four months between petitions was not deemed “substantial delay.”

¹⁵ Available at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=5&doc_id=1374024&doc_no=F055768 (last accessed August 8, 2016).

- *In re Furnace* (2010) 185 Cal.App.4th 649, 656 [110 Cal.Rptr.3d 820, 824]. Mr. Furnace filed his petition challenging his validation as a gang member in the Kings County Superior Court and it was denied on June 11, 2009.¹⁶ Mr. Furnace then filed a new petition in the California Court of Appeal on July 22, 2009. (*Ibid.*). The 41 day interval between pendency of petitions was not deemed “substantial delay.”
- *In re Richardson* (2011) 196 Cal.App.4th 647 [126 Cal.Rptr.3d 720], *as modified* (June 29, 2011), *as modified on denial of reh'g* (July 12, 2011). Mr. Richardson filed a petition for a writ of habeas corpus challenging his sentence in the Sacramento County Superior Court and it was denied on July 31, 2009.¹⁷ Mr. Richardson filed his next habeas corpus petition in

¹⁶ Available at <https://cakingsodyprod.tylerhost.net/CAKINGSPROD/Home/WorkspaceMode?p=0> (last accessed August 8, 2016).

¹⁷ Available at <https://services.saccourt.ca.gov/PublicCaseAccess/Criminal/CaseDetails?SourceSystemId=8&SourceKey=1179902> (last accessed August 5, 2016).

the California Court of Appeal in the Third Appellate District 19 days later on August 19, 2009, and it was not deemed untimely.¹⁸

- *In re Efstathiou* (2011) 200 Cal.App.4th 725 [133 Cal.Rptr.3d 34]). In this habeas corpus action involving conduct credits, petitioner first filed a petition in the Sacramento County Superior Court (No. 11F00471 , and that petition was denied on March 11, 2011.¹⁹ Mr. Efstathiou then filed a petition in the California Court of Appeal on December 15, 2011.²⁰ The interval of 279 days was not deemed “substantial delay.”
- *In re Fratus* (2012) 204 Cal.App.4th 1339, 1340 [139 Cal.Rptr.3d 660, 661]. In this habeas corpus challenge to

¹⁸ Available at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=3&doc_id=1917374&doc_no=C062684 (last accessed August 8, 2016).

¹⁹ Available at <https://services.saccourt.ca.gov/PublicCaseAccess/Criminal/CaseDetails?sourceSystemId=8&sourceKey=1321668> (last accessed August 5, 2016).

²⁰ Available at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1999997&doc_no=S198672 (last accessed August 5, 2016).

a state prison disciplinary violation that resulted in a loss of good time behavior credits, the Court of Appeals noted that “[i]n February 2009, the superior court denied the petition for writ of habeas corpus.” (*Ibid.*). Mr. Fratus then filed a new petition in the Court of Appeal in August of 2009. (*Ibid.*). The Court of Appeal gave no indication that the period of some six months between the superior court’s order denying the first petition and the filing of the second petition in the Court of Appeal amounted to “substantial delay” that required any justification or analysis.

- *In re Martinez* (2013) 216 Cal.App.4th 1141, 1147 [157 Cal.Rptr.3d 701, 705], *as modified* (June 18, 2013). On September 22, 2011, petitioner filed a petition for writ of habeas corpus in Del Norte County Superior Court (Docket No. HCPB11–5224) challenging prison’s confiscation of a book. The petition was denied on November 23, 2011. (*Ibid.*) A new petition raising the same challenge was filed in the Court of Appeal on January 30, 2012. (*Id.* at p. 1148, 706). The interval

between pendency of the petitions—68 days—was not deemed a “substantial delay.”

- *Pulido v. Superior Court* (2013) 221 Cal.App.4th 1403, 1405 [165 Cal.Rptr.3d 375, 376]. Petitioner filed a petition for a writ of habeas corpus challenging his conviction and it was denied on November 16, 2010. Petitioner then filed a new petition raising the same claim in the California Court of Appeal on September 1, 2011. (*Ibid.*). The Court of Appeal did not deem the interval between the dates the petitions were pending—289 days, or approximately nine-and-a-half months—“substantial delay.”
- *In re Alvarez* (2013) 222 Cal.App.4th 1064, 1074 [166 Cal.Rptr.3d 271, 276], *as modified on denial of reh'g* (Jan. 8, 2014). On July 8, 2011, petitioner filed a petition for writ of habeas corpus regarding prison’s gang validation procedures with the Superior Court of Tuolumne County. The petition was denied on August 25, 2011. (*Ibid.*). A new petition raising similar claims was filed in the Court of Appeal on January 5, 2012.

(*Ibid.*). The interval of 133 days, or approximately four months, between the pendency of the petitions was not deemed a “substantial delay.”

- *People v. Willover* (2016) 248 Cal.App.4th 302, 309 [203 Cal.Rptr.3d 384, 388], *review filed* (July 22, 2016).

Petitioner filed a habeas corpus petition in superior court challenging his sentence and the petition was denied on January 13, 2014. Petitioner filed his next petition in the Court of appeal on March 10, 2014. (*Ibid.*) The 56-day gap of time between pendency of the petitions was not treated as “substantial delay.”

The following table summarizes these cases and shows that between 2000 and the present, intervals between the pendency of habeas corpus petitions lasting an average of 162 days, a median period of 126.5 days, and up to 757 days, have not been described as “substantial delay” by California appellate courts. This supports Mr. Robinson’s position that a 66-day period between the pendency of habeas corpus petitions is not regarded as “substantial delay” by California appellate courts.

Case Name and Citation	Period Not Deemed "Substantial Delay"
<i>In re Moore</i> (2005) 133 Cal.App.4th 68, 71 [34 Cal.Rptr.3d 605, 607]	24 days
<i>In re Walker</i> (2007) 147 Cal.App.4th 533, 536 [54 Cal.Rptr.3d 411, 413], <i>as modified on denial of reh'g</i> (Mar. 6, 2007)	757 days
<i>In re White</i> (2008) 163 Cal.App.4th 1576, 1578 [79 Cal.Rptr.3d 195, 195].	142 days
<i>In re Johnson</i> (2009) 176 Cal.App.4th 290 [97 Cal.Rptr.3d 692], <i>as modified</i> (Aug. 12, 2009).	120 days
<i>In re Furnace</i> (2010) 185 Cal.App.4th 649 [110 Cal.Rptr.3d 820]	41 days
<i>In re Richardson</i> (2011) 196 Cal.App.4th 647 [126 Cal.Rptr.3d 720], <i>as modified</i> (June 29, 2011), <i>as modified on denial of reh'g</i> (July 12, 2011)	19 days
<i>In re Efstathiou</i> (2011) 200 Cal.App.4th 725 [133 Cal.Rptr.3d 34]	279 days
<i>In re Fratus</i> (2012) 204 Cal.App.4th 1339 [139 Cal.Rptr.3d 660]	180 days
<i>In re Martinez</i> (2013) 216 Cal.App.4th 1141, 1147 [157 Cal.Rptr.3d 701, 705], <i>as modified</i> (June 18, 2013)	68 days
<i>Pulido v. Superior Court</i> (2013) 221 Cal.App.4th 1403, 1405 [165 Cal.Rptr.3d 375, 376]	289 days
<i>In re Alvarez</i> (2013) 222 Cal.App.4th 1064, 1074 [166 Cal.Rptr.3d 271, 276], <i>as modified on denial of reh'g</i> (Jan. 8, 2014)	133 days
<i>People v. Willover</i> (2016) 248 Cal.App.4th 302, 309 [203 Cal.Rptr.3d 384, 388], <i>review filed</i> (July 22, 2016)	56 days
Average Interval	162 days
Median Interval	126.5 days

V. CONCLUSION

California courts have adopted a timeliness standard for noncapital habeas corpus petitions that first asks whether a petition was filed after “substantial delay.” While California courts have not identified a firm time period that constitutes “substantial delay,” California precedent, as well as the practice of California appellate courts, reveals that, with respect to intervals between the pendency of petitions, periods significantly greater than the 66-day period at issue in the present case have not been deemed “substantial delay.” This makes perfect sense in California, where many noncapital habeas corpus petitioners are imprisoned and acting *pro se*, and where the requirements for filing an original petition in each level of the California court system are more demanding than the filing of a simple notice of appeal. While federal courts looking at state postconviction collateral challenge procedures across the United States may assume that in ordinary cases periods of no more than 60 days can pass between the pendency of state court proceedings, as demonstrated above this general assumption is not true in California.


For the foregoing reasons, the Court should answer the Ninth Circuit's certified question as follows:

When a California court denies a petition for a writ of habeas corpus, and the petitioner subsequently files a habeas corpus petition containing the same or similar claims in a higher California court, the time period between the earlier petition's denial and filing of the next petition is relevant to the question of whether the petition was filed after "substantial delay." If "substantial delay" did occur, the court will consider whether (a) there is good cause for the delay, or (b) an exception to the bar of untimeliness applies. A 66-day period between the date a lower court petition is denied and a petition raising the same claim is filed in a higher court is not a "substantial delay."

Dated: August 17, 2016

Respectfully submitted

HEATHER E. WILLIAMS
Federal Defender


CAROLYN M. WIGGIN
Assistant Federal Defender

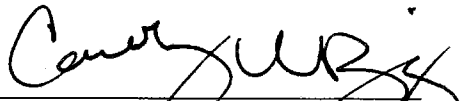
Attorneys for Petitioner
JULIUS M. ROBINSON

CERTIFICATE OF WORD COUNT

I, Carolyn M. Wiggin, counsel for petitioner, hereby certify pursuant to rule 8.520, subdivision (c), of the California Rules of Court that petitioner's opening brief on the merits in the above-referenced case consists of 8,128 words as indicated by the software program used to prepare the document.

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

Executed on August 17, 2016, at Sacramento, California.



CAROLYN M. WIGGIN

DECLARATION OF SERVICE BY MAIL

Re: Robinson v. Lewis, No. S228137

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is: 801 I Street, Third Floor, Sacramento, California 95814.

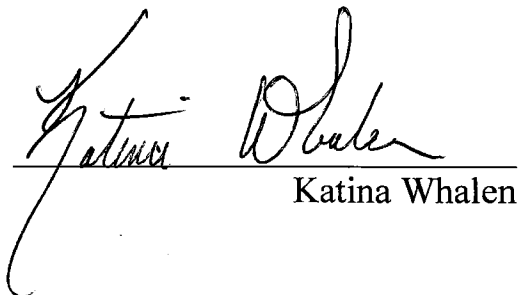
On August 18, 2016, I served a true copy of the attached Petitioner's Opening Brief on Respondent G.W. Lewis by placing same in an envelope or envelopes addressed respectively as follows:

Brian G. Smiley
Office of the Attorney General
P.O. Box 944255
Sacramento, California 94244-2550

David Andrew Eldridge
Office of the Attorney General
P.O. Box 944255
Sacramento, California 94244-2550

Each said envelope was then sealed and deposited in the United States Mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on August 18, 2016, at Sacramento, California.



Katina Whalen