

1  
2 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

3  
4 COUNTY OF \_\_\_\_\_

5  
6  
7  
8 \_\_\_\_\_,  
9  
10 Petitioner,  
11  
12 On Habeas Corpus.

(Superior Court No. \_\_\_\_\_)

13  
14 PETITION FOR WRIT OF HABEAS CORPUS

15  
16 Petitioner \_\_\_\_\_ respectfully petitions this Court for a writ of habeas corpus on  
17 the ground that the statute of limitations applicable to the charged sex offenses expired prior  
18 to the 1994 enactment of Penal Code section 803(g)<sup>1</sup> and the application of section 803(g)  
19 to revive prosecution of these time-barred offenses violated the ex post facto clause under  
20 the U.S. Supreme Court's opinion in *Stogner v. California* (June 26, 2003) \_\_\_ U.S. \_\_\_,  
21 2003 WL 21467073. By this verified petition, petitioner sets forth the following facts and  
causes for the issuance of the writ:

- 22 1. Petitioner is unlawfully held in custody at \_\_\_\_\_ State Prison by the Warden,  
and by the Director of the Department of Corrections.
- 23 2. Petitioner is confined pursuant to a judgment of imprisonment of \_\_\_ years rendered  
24 on \_\_\_\_\_ in \_\_\_\_\_ County Superior Court, No. \_\_\_\_\_, Hon. \_\_\_\_\_, Judge.
- 25 3. In that proceeding, petitioner was charged with \_\_\_\_\_, in an information filed  
26 \_\_\_\_\_ . On \_\_\_\_\_, petitioner entered a plea to Counts \_\_, alleged offenses  
under section \_\_\_\_\_. (CT \_\_\_\_\_) On \_\_\_\_\_, the trial court sentenced petitioner to a

27 \_\_\_\_\_  
28 <sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

1 term of \_\_ years. (CT \_\_)

2 4. Petitioner's appeal from that judgment is currently pending before the Court of  
3 Appeal, A\_\_\_\_\_. However, since no certificate of probable cause has issued, the  
4 scope of that appeal is strictly limited to sentencing and search-and-seizure issues  
5 (Cal. Rules of Court, rule 31(d)) and does not include "constitutional, jurisdictional,  
6 or other grounds going to the legality of the proceedings," (§ 1237.5), such as the ex  
7 post facto/statute of limitations claim raised in this petition.

8 5. **Petitioner is entitled to issuance of a writ of habeas corpus vacating his**  
9 **convictions because those convictions were obtained in violation of the ex post**  
10 **facto clause of the U.S. Constitution.** As indicated on the face of the information  
11 (CT \*; copy attached as Ex. A), the offenses allegedly occurred on \_\_\_\_\_. At the  
12 time of the alleged offenses, the applicable statute of limitations was \_\_ years.  
13 Consequently, **the statute of limitations had expired prior to January 1, 1994, the**  
14 **effective date of section 803(g)**, which purported to revive the state's authority to  
15 prosecute otherwise time-barred sexual offenses. Because petitioner was not subject  
16 to prosecution for the alleged 19\_\_ offenses, due to expiration of the statute of  
17 limitations, as of the time of enactment of section 803(g), the application of that  
18 statute to authorize prosecution and conviction of petitioner for those alleged offenses  
19 violated the federal ex post facto clause under the U.S. Supreme Court's just-issued  
20 opinion in *Stogner v. California* (June 26, 2003) \_\_ U.S. \_\_\_, 2003 WL 21467073.

21 6. Petitioner is entitled to habeas corpus relief for the ex post facto violation because he  
22 does not have a speedy and adequate remedy at law. Despite the pendency of his  
23 direct appeal, A\_\_\_\_\_, that appeal does not provide a speedy and adequate remedy for  
24 this fundamental constitutional violation because, due to the absence of a certificate  
25 of probable cause, the limitations bar to the conviction offenses is not reviewable in  
26 petitioner's post-plea appeal. (§ 1237.5) Consequently, petitioner has no available  
27 remedy at law for the constitutional and jurisdictional issues raised in this petition.

28 7. Habeas corpus is the appropriate procedure for application of *Stogner v. California*  
to petitioner's case on the additional ground that, even if those issues were cognizable  
on direct review, the pending appeal would not provide a speedy and adequate  
mechanism for disposition of the case. The habeas corpus procedure allows for more  
prompt hearing and disposition of this meritorious claim than would likely be possible  
under the briefing rules ordinarily applicable to direct appeals. Additionally, as a

1 superior court, this Court is in a much better position than an appellate court to take  
2 the necessary steps to grant petitioner immediate relief, including the issuance of  
3 orders for petitioner's transportation and immediate release from prison.

4 8. The violation is properly reviewable on habeas corpus because, under well-established  
5 California law, a violation of the applicable statute of limitations is a jurisdictional  
6 defect, and the error is not waived by a plea or by failure to perfect an appeal on that  
7 ground. Because jurisdictional errors such as this are not subject to the usual  
8 limitations barring habeas review of claims which could have been raised on appeal,  
9 the violation is properly cognizable via this petition for writ of habeas corpus.

10 9. Habeas corpus relief is also appropriate on the additional and independent grounds  
11 that the claim relies on a change in the law and that the ex post facto violation  
12 represents fundamental constitutional error for the reasons stated in *Stogner v.*  
13 *California*.

14 10. Because the \_\_\_-year statute of limitations applicable at the time of the \_\_\_ offenses  
15 had expired prior to the enactment of section 803(g), petitioner's case comes squarely  
16 within the ex post facto holding of *Stogner v. California*. Accordingly, petitioner  
17 respectfully requests this Court to vacate those convictions, to order dismissal of the  
18 information with prejudice, and to order petitioner's immediate release from custody.

19 11. Petitioner's continuing imprisonment on charges which had become time-barred prior  
20 to the enactment of section 803(g) represents an ongoing violation of the ex post facto  
21 clause. Because the U.S. Supreme Court's opinion in *Stogner* conclusively resolves  
22 the legal issues and because there are no factual questions (since the limitations bar  
23 appears on the face of the information), petitioner respectfully prays this Court to  
24 consider and decide this habeas petition on an expedited basis. Consequently,  
25 petitioner requests this Court to bypass any round of "informal" briefing on the habeas  
26 petition and to proceed immediately to issuance of the writ of habeas corpus or an  
27 order to show cause (OSC). Additionally, petitioner requests this Court to set an  
28 expedited schedule for the return to the OSC or writ and for prompt disposition of the  
petition. (See § 1475.) Pending final disposition of the petition, petitioner  
respectfully request that the Court order him released on bail or on his own  
recognizance, as authorized by section 1476.

12. Petitioner hereby incorporates by reference the attached Memorandum of Points and  
Authorities in support of this petition and the attached exhibits.

1 13. As stated above, petitioner has no speedy and adequate remedy at law for the  
2 constitutional and jurisdictional violations alleged here.

3 14. No prior petition for writ of habeas corpus has been filed by petitioner or on  
4 petitioner's behalf.

5 WHEREFORE, petitioner respectfully requests that this Court:

6 a. Take judicial notice of all court files and transcripts in Superior Court No. \_\_\_\_\_;

7 b. Order respondent to show cause why petitioner is not entitled to the relief requested;

8 c. Order an expedited schedule for filing of respondent's return and consideration and  
9 disposition of the petition;

10 d. Order petitioner released on bail or on his own recognizance pending final disposition  
11 of the petition;

12 e. After full consideration of the petition and return and any other pleadings, vacate the  
13 judgment and sentence imposed on petitioner in \_\_\_\_\_ County Superior Court  
14 No. \_\_\_\_\_ and order petitioner immediately discharged from any custody or other  
15 restraints imposed pursuant to that judgment;

16 f. Order the information in Superior Court No. \_\_\_\_\_ dismissed with prejudice; and

17 g. Grant such further relief as is appropriate in the interests of justice, including any  
18 other orders necessary to ensure petitioner's prompt release from custody.

19 For all the foregoing reasons, \_\_\_\_\_ respectfully requests this Court to grant the  
20 petition for writ of habeas corpus and to order petitioner's immediate release.

21 Dated: \_\_\_\_\_, 2003

22 Respectfully submitted,

23 \_\_\_\_\_  
24 Attorney for Petitioner

**VERIFICATION**

I, \_\_\_\_\_, declare:

I am a member of the Bar of the State of California. I am the attorney for petitioner \_\_\_\_\_, who is confined and restrained of his liberty at \_\_\_\_\_ State Prison, in \_\_\_\_\_, California.

I am authorized to file this petition for writ of habeas corpus on his behalf. I make this verification because petitioner is incarcerated in a county different from that of my law office and because these matters are more within my knowledge than his.

I have read the foregoing petition for writ of habeas corpus. I declare that all the matters alleged here are true of my own personal knowledge or are supported by the record in petitioner's direct appeal, No. \_\_\_\_\_, or by the attached exhibits.

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

Executed on \_\_\_\_\_, 2003, at \_\_\_\_\_, California.

\_\_\_\_\_  
Attorney for Petitioner



1 seizure issues. (Cal. Rules of Court, rule 31(d).) Consequently, there is not an available  
2 remedy for this error on direct appeal. Moreover, since the *Stogner*/limitations issue would  
3 not be cognizable on the pending direct appeal, this Court’s consideration of that issue on  
4 habeas will not interfere in any way with the appellate court’s jurisdiction over the issues of  
the direct appeal.

5 Although the *Stogner*/limitations claim is not cognizable on direct appeal (due to the  
6 absence of a certificate of probable cause (§ 1237.5)), it is properly cognizable on habeas  
7 corpus. The underlying statute-of-limitations issue is not subject to forfeiture or implicit  
8 waiver, even by entry of a guilty plea.. The California Supreme Court recently reiterated its  
longstanding rule recognizing the jurisdictional nature of the statute-of-limitations and the  
inapplicability of waiver/forfeiture bars:

9 In criminal cases "in California the statute of limitations constitutes a  
10 substantive rather than a procedural right which is not waived [fn.] by failure  
11 to assert it at the pleading stage.... [I]t is now well settled that a conviction,  
12 *even if based on a plea of guilty, is subject to collateral [or direct] attack* if  
13 the charge was originally barred by the applicable limitation period," ...  
14 [Citation.] The rule is a reflection of the fundamental principle of our law that  
"the power of the courts to proceed"-i.e., their jurisdiction over the subject  
15 matter-cannot be conferred by the mere act of a litigant, whether it amount to  
consent, waiver, or estoppel [citations], and hence that the lack of such  
jurisdiction may be raised for the first time on appeal.' [Citations]" (*People v.*  
*Williams* (1999) 21 Cal.4th 335, 339 -340, emphasis added.)

16 Thus, under the express terms of *William* and previous cases, a conviction in violation  
of the applicable statute-of-limitations is “subject to collateral ... attack” – i.e., to a habeas  
17 corpus petition – even after a guilty plea. (*Williams, supra*, at p. 340.) Additionally,  
18 because a limitations error represents a “lack of ... jurisdiction” (as also reiterated in *Williams*  
*(ibid.)*), the error comes squarely within the California Supreme Court’s exceptions to the  
19 usual rules barring habeas consideration of claims that were or could have been raised on  
20 appeal. (*In re Harris* (1993) 5 Cal.4th 813, 836-841 [“lack of fundamental jurisdiction”  
and “in excess of jurisdiction” exceptions to habeas restrictions].)

21 *Williams*’ express endorsement of “collateral attack” on limitations-barred convictions  
22 and *Harris*’ authorization of habeas review of jurisdictional errors are dispositive of  
23 petitioner’s entitlement to habeas relief. Moreover, independently of those grounds, the  
24 *Stogner*/limitations error also comes within *Harris*’ other exceptions allowing habeas review  
25 in lieu of a direct appeal. First, *Stogner v. California* represents a “change in the law”  
(*Harris, supra*, 5 Cal.4th at pp. 841) because it overruled the California Supreme Court’s

1 opinion in *People v. Frazer* (1999) 21 Cal.4th 737, which had upheld the constitutionality  
2 of section 803(g). (See *Stogner v. California, supra*, 2003 WL 21467073 at pp. \*\*6-8, 13  
3 [criticizing *Frazer*].)

4 Finally, the error also comes within *Harris*' exception for "fundamental constitutional  
5 error." (*Harris, supra*, 5 Cal.4th at pp. 829-836.) As the *Stogner* majority explained in  
6 striking down section 803(g):

7 California's law subjects an individual such as *Stogner* to prosecution long  
8 after the State has, in effect, granted an amnesty, telling him that he is "at  
9 liberty to return to his country ... and that from henceforth he may cease to  
10 preserve the proofs of his innocence," [Citations]. It retroactively withdraws  
11 a complete defense to prosecution after it has already attached, and it does so  
12 in a manner that allows the State to withdraw this defense at will and with  
13 respect to individuals already identified. [Citation.] "Unfair" seems to us a fair  
14 characterization. (*Stogner v. California, supra*, 2003 WL 21467073 at p. \*17.)

15 That description of the fundamental unfairness of "reviv[ing] a long- forbidden  
16 prosecution" (*Stogner, supra*, at p. \*16) brings this violation squarely within the category of  
17 "constitutional error [which] is both clear and fundamental and strikes at the heart of the trial  
18 process." (*Harris, supra*, 5 Cal.4th at p. 834.)

19 On all these grounds, petitioner's claim of jurisdictional and constitutional error is  
20 properly cognizable on habeas corpus.  
21  
22  
23  
24  
25  
26  
27  
28

1 **II. BECAUSE THE APPLICABLE STATUTE OF LIMITATIONS EXPIRED**  
2 **PRIOR TO THE ENACTMENT OF SECTION 803(g), THE EX POST FACTO**  
3 **CLAUSE BARRED PETITIONER’S PROSECUTION, AND PETITIONER IS**  
4 **ENTITLED TO IMMEDIATE RELIEF UNDER *STOGNER v. CALIFORNIA*.**

5 An information filed on \_\_\_\_\_ charged petitioner with violations of section \_\_\_\_, *all*  
6 *occurring between \_\_\_\_\_ and \_\_\_\_\_* (Copy attached as Exhibit A.) At the time of the  
7 charged offenses, the applicable statute of limitations was \_\_\_ years. (§ \_\_\_\_). The  
8 explicitly acknowledged that the limitations period under section § \_\_\_\_ had expired. The  
9 information further alleged that the prosecution was undertaken pursuant to Penal Code  
10 section 803(g). As discussed below, section 803(g) purported to authorize prosecution for  
11 time-barred sexual offenses such as these, provided the charges were filed within one year  
12 of the alleged victim’s report of the accusation to a law enforcement agency.<sup>2</sup> The  
13 information here pleaded factual allegations assertedly bringing the case within the terms of  
14 section 803(g).

15 On \_\_\_\_\_, the jury convicted petitioner of \_\_\_\_\_ counts of \_\_\_\_\_. On \_\_\_\_\_,  
16 the trial court sentenced petitioner to a term of \_\_\_\_\_ years.

17 As the chronology above reflects, the state charged petitioner with these sexual  
18 offenses over \_\_\_ years after their alleged commission, even though the statute of limitations  
19 for such crimes in \_\_\_\_\_ was \_\_\_ years. Most importantly for present purposes, that \_\_\_-year  
20 statute of limitations expired long before January 1, 1994, the operative date of the legislation  
21 supposedly reviving the state’s authority to prosecute and punish these offenses.

22 In *Stogner v. California, supra*, 2003 WL 21467073, the United States Supreme  
23 Court held that application of California’s Penal Code section 803, subdivision (g) (enacted  
24 in 1994 and amended in 1996), to Stogner’s case and to those like Stogner’s, violated the  
25 federal constitution’s *Ex Post Facto Clause*. Section 803, subdivision (g), “authorizes  
26 prosecution for criminal acts committed many years beforehand –and where the original  
27 limitations period has expired – as long as prosecution begins within a year of a victim’s first  
28 complaint to the police.” (*Id.*) Like Stogner, petitioner was charged with crimes alleged to  
have been committed decades earlier and, like Stogner, “California could not have  
prosecuted” petitioner, inasmuch as the then-applicable \_\_\_-year statute of limitations  
governing the crimes of which petitioner was accused (and convicted) had expired \_\_\_ years  
or more “before the present prosecution was brought.” (*Id.*)

The Unites States Supreme Court ruled that section 803(g) “threatens the kind of harm  
that, in this Court’s view, the *Ex Post Facto Clause* seeks to avoid. Long ago the Court

---

<sup>2</sup> Section 803(g) also included additional factual conditions, not directly relevant to  
the ex post facto issue here, concerning the nature of the charged conduct and  
corroborating evidence.

1 pointed out that the *Clause* protects liberty by preventing governments from enacting statutes  
2 with ‘manifestly unjust and oppressive’ retroactive effects. . . . [E]xtending a limitations  
3 period after the State has assured ‘a man that he has become safe from its pursuit .. seems to  
4 most of us unfair and dishonest.’ [citation omit.] In such a case, the government has refused  
5 ‘to play by its own rules,’ [cit. omit.]. It has deprived the defendant of the ‘fair warning,’  
6 [cit. omit.] that might have led him to preserve exculpatory evidence. [cit. omit.]. And a  
7 Constitution that permits such an extension, by allowing legislatures to pick and choose when  
8 to act retroactively, risks both ‘arbitrary and potentially vindictive legislation,’ and erosion  
9 of the separations of powers. [cit. omit.]” (*Id.*, at p. 5576)

10 The *Stogner* Court found its interpretation of the *Clause* as applying to the  
11 resurrection of expired statutes of limitations “literally within the categorical descriptions of  
12 *ex post facto* laws set forth by Justice Chase more than 200 years ago in *Calder v. Bull*”  
13 [(1798) 3 Dall. 386, 1 L.Ed. 648]” and in the virtually unanimous opinions of “numerous  
14 legislators, [state] courts and commentators” dating back to the Civil War. (*Id.*, at pp. 5576-  
15 5577) It found the California Supreme Court’s *Frazer* opinion to be the anomaly, pointedly  
16 observing that “[t]he dissent refers to no case, outside of California, that has held, or even  
17 suggested,” that laws resurrecting time-barred prosecutions are **not** *ex post facto*. (*Id.*, at p.  
18 5580)

19 Petitioner’s case comes squarely within *Stogner*’s *ex post facto* holding because, as  
20 summarized above, the applicable statute of limitations expired before the enactment of  
21 section 803(g). Nor are there any factual questions or ambiguities requiring resolution. The  
22 limitations bar appears on the face of the accusatory pleading. Indeed, the information  
23 acknowledged the expiration of the statute of limitations and expressly relied upon section  
24 803(g), the very statute voided in *Stogner*, as the basis for this prosecution. After *Stogner*,  
25 there can be question that petitioner is entitled to immediate relief, and release from his  
26 unlawful imprisonment.  
27  
28

1 **III. BECAUSE PETITIONER’S ENTITLEMENT TO RELIEF IS CLEAR UNDER**  
2 **STOGNER, THIS COURT SHOULD ORDER EXPEDITED FILING OF A**  
3 **RETURN AND SHOULD ORDER PETITIONER RELEASED ON BAIL OR**  
4 **HIS OWN RECOGNIZANCE PENDING FINAL DISPOSITION OF THE**  
5 **PETITION.**

6 As outlined in the preceding section, because petitioner’s conviction was only made  
7 possible by section 803(g)’s unconstitutional revival of the statute of limitations, petitioner’s  
8 entitlement to relief under *Stogner v. California* is clear-cut. Now that the U.S. Supreme  
9 Court has struck down that statute, every additional day that petitioner spends in prison is  
10 “manifestly unjust and oppressive” and represents an affront to fundamental concepts of  
11 justice. (See (*Stogner, supra*, 2003 WL 21467073 at p. \*3.) With the constitutional issue  
12 now definitively resolved, there is no longer any room for debate about his entitlement to  
13 relief and hence no cause for any delay. Consequently, this petition presents this Court with  
14 the task of ensuring final disposition of petitioner’s case on the most expedited basis  
15 possible.

16 Habeas corpus has historically been the preferred vehicle in situations such as this  
17 where there is an urgent need to secure a defendant’s immediate release from custody. As  
18 the Supreme Court has explained, though habeas requires a number of formal procedures,

19 This does not mean that obtaining relief through habeas corpus proceedings  
20 must be slow or cumbersome. *If the claim asserted in the petition has apparent*  
21 *merit and there is some urgency* because the petition, for example, alleges  
22 entitlement to release on bail or challenges the validity of a contempt order, *the*  
23 *court may require the custodian or real party in interest to submit the return*  
24 *to the writ or order to show cause as little as 24 hours* after being served with  
25 the petition. (Pen. Code, § 1475, pars. 3-4.) *Pending the outcome of the habeas*  
26 *corpus proceeding, the court may order that the petitioner be temporarily*  
27 *released from custody.* (See *id.*, § 1476 [court may "admit [the petitioner] to  
28 *bail, if the offense isailable"] [Citations]. (*People v. Romero* (1994) 8*  
*Cal.4th 728, 744, emphasis added.*)

29 Petitioner requests this Court to take each of the steps outlined in *Romero* to expedite  
30 disposition of the matter. First, because the information on its face reveals that the charged  
31 offenses were time-barred prior to 1994, there can be no question but that petitioner has  
32 established a “prima facie case” for relief under *Stogner v. California*. Consequently, this  
33 Court *should dispense with soliciting any “informal” response to the habeas petition and*  
34 *should proceed immediately with issuance of an order to show cause (OSC) or a writ of*  
35 habeas corpus to bring petitioner before the court. Pursuant to section 1475, this Court  
36 should order respondent to file its return within one court day of the filing and service of this  
37 petition and should set the matter for hearing at the earliest available date. Finally, pending  
38 that hearing and final disposition of the petition, this Court should order petitioner released  
39 on his own recognizance or on bail, as authorized by section 1476. (*Romero, supra*, 8  
40 Cal.4th at p. 744.)

1  
2 **CONCLUSION**

3 Because petitioner's conviction was obtained pursuant to section 803(g)'s  
4 unconstitutional revival of the statute of limitations, *Stogner v. California* requires this Court  
5 to take all steps necessary to ensure petitioner's prompt release. Accordingly, as outlined  
6 in the preceding sections, petitioner respectfully asks this Court: 1) to grant petitioner  
7 released on his own recognizance or on bail pending final disposition of this petition; 2) to  
8 order respondent to show cause on an expedited basis (within one court day) why petitioner  
9 is not entitled to relief under *Stogner v. California*; 3) to set the matter for hearing at the  
earliest possible date; and 4) to vacate petitioner's conviction and judgment and to order the  
underlying information dismissed with prejudice.

10 Dated: \_\_\_\_\_, 2003

Respectfully submitted,

11  
12 \_\_\_\_\_  
Attorney for Petitioner  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28