

**ATTACHMENT  
TO GUTIERREZ PETITION**

**ANSWERS TO QUESTION 6, GROUNDS FOR RELIEF  
(JUDICIAL COUNCIL FORM MC-275)**

**QUESTION 6:** To answer Question 6, write “Please see Attachment” in the space for that question on the MC-275 form if it is not already printed there.

**FILL OUT THE ATTACHMENT:** Fill in the blanks below that apply to you in part (a), *Supporting Facts*.

**SIGN, DATE, ATTACH:** When you are done with the Attachment, sign and date it at the end. Then attach all pages to your MC-275 form.

**ADDITIONAL ATTACHMENT:** If available, also attach a copy of the transcript from your sentencing.

**IMPORTANT:** Read everything very carefully, both the parts already printed and the information you add. Make sure it is all correct and applies to your case. Cross out or change anything that is not accurate. This Attachment is filed under penalty of perjury.

**Question 6: GROUNDS FOR RELIEF**

**Ground 1**

This petition alleges the right to be resentenced under *People v. Gutierrez* (2014) 58 Cal.4th 1354. I am serving a sentence of life without possibility of parole (LWOP), imposed under Penal Code section 190.5, subdivision (b), for an offense I committed as a juvenile.

Habeas corpus is the appropriate remedy for defendants whose cases became final before *Gutierrez*. *People v. Caballero* (2012) 55 Cal.4th 262, 269, specifically held:

Defendants who were sentenced for crimes they committed as juveniles who seek to modify life without parole or equivalent de facto sentences already imposed may file petitions for a writ of habeas corpus in the trial court in order to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings.

(See also *People v. Anderson* (1972) 6 Cal.3d 628, 657, fn. 45, superseded on substantive grounds by constitutional amendment, Cal. Const., art. I, § 27; *In re Nunez* (2009) 173 Cal.App.4th 709.)

**(a) Supporting facts:**

The crime for which I was convicted and the LWOP sentence I am serving are shown in question 3 of my MC-275 form. The crime allegedly was committed on

\_\_\_\_\_ *(month/day/year)*. I was born on \_\_\_\_\_

*(month/day/year)*. Therefore, at the time of the crime, I was less than 18 years of age. I was sentenced on \_\_\_\_\_ *(month/day/year)*. *(If you have more than one crime,*

*you may use a separate sheet to provide more information.)* I am currently in custody at

\_\_\_\_\_ *(prison name and address)*.

I enclose a copy of the transcript from my sentencing. *(If your sentencing transcript is available, check this box and enclose a copy of it with the petition.)*

**(b) Supporting authority:**

***People v. Gutierrez* (2014) 58 Cal.4th 1354**

*People v. Gutierrez, supra*, 58 Cal.4th 1354 held section 190.5(b) is to be interpreted as allowing trial courts full discretion in choosing between LWOP and 25-life, without a presumption in favor of LWOP. Such a presumption would raise serious federal constitutional issues under *Miller v. Alabama* (2012) 567 U.S. \_\_\_\_ [132 S.Ct. 2455, 183 L.Ed.2d 407], which found mandatory LWOP for crimes committed by a juvenile to be

cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. *Gutierrez* disapproved a line of cases based on *People v. Guinn* (1994) 28 Cal.App.4th 1130, which had read section 190.5(b) as creating that presumption.

*Gutierrez* ruled that, in making the sentencing decision, the trial court must consider the full range of relevant factors, as laid out by *Miller*. These include chronological age and its typical features, such as immaturity, impetuosity, and failure to appreciate risks and consequences; the defendant’s family and home environment; the circumstances of the offense, including the role the defendant played; the defendant’s inability to deal effectively with the legal system because of youth; and the possibility of rehabilitation. (*People v. Gutierrez, supra*, 58 Cal.4th at pp. 1388-1389; see *Miller v. Alabama, supra*, 132 S.Ct. 2455, 2467-2469.) A court acting under the compulsion of a presumption in favor of LWOP is unable to weigh these factors properly and give paramount weight to the defendant’s individual circumstances and youth.

*Gutierrez*, like *Miller*, is fully retroactive as a substantive rule “prohibiting a certain category of punishment for a class of defendants because of their status or offense.” *Penry v. Lynaugh* (1990) 492 U.S. 302 held a decision that execution of the mentally retarded is cruel and unusual punishment would apply retroactively to all cases, regardless of their finality.<sup>1</sup> The Supreme Court stated:

[A] new rule placing a certain class of individuals beyond the State's power to punish by death is analogous to a new rule placing certain conduct beyond the State's power to punish at all. In both cases, the Constitution itself deprives the

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<sup>1</sup>On the merits, *Penry* found execution of the retarded was not cruel and unusual punishment. This holding was overruled in *Atkins v. Virginia* (2002) 536 U.S. 304.

State of the power to impose a certain penalty . . . . “There is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose.” (Citation.)

(492 U.S. at p. 330.) The companion case to *Miller, Jackson v. Arkansas*, decided in the same opinion, itself involved a habeas corpus action initiated after the direct appeal had become final. (*Miller v. Alabama, supra*, 132 S.Ct. 2455, 2461.)

### **Resentencing**

*Gutierrez* gave explicit direction on the remedy for a sentence imposed under section 190.5(b). The defendant must be resentenced unless the record “clearly indicate[s]” that the trial court would have reached the same conclusion “even if it had been aware that it had such discretion.” (*People v. Gutierrez, supra*, 58 Cal.4th 1354, 1391.) In other words, the record must explicitly rebut the inference that the trial court relied at least in part on *Guinn* and affirmatively show the court would have chosen LWOP, anyway, in the exercise of unfettered discretion. A silent or ambiguous record requires resentencing.

*Gutierrez* noted that, when the defendants in that case were sentenced originally, the *Guinn* line of cases was the prevailing appellate court authority. The Supreme Court accordingly presumed trial courts followed it. (*People v. Gutierrez, supra*, 58 Cal.4th 1354, 1390; see *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [every trial court throughout state is bound to follow a decision of the Court of Appeal not contradicted by another Court of Appeal or the Supreme Court].) Even during the short period when there was at least one published Court of Appeal decision disagreeing with *Guinn* and so trial courts were not strictly bound to follow it, it is highly likely a trial

court would have followed *Guinn*. The *Guinn* line still represented the weight of authority, and the Supreme Court was rapidly granting review in cases with the *Gutierrez* issue, including those disagreeing with *Guinn*.<sup>2</sup>

**Request for resentencing and appointment of counsel**

My sentence of life without possibility of parole is for an offense or offenses committed when I was less than 18 years old. Unless the sentencing record affirmatively demonstrates the trial court refused to apply *People v. Guinn, supra*, 28 Cal.App.4th 1130 and freely weighed the factors required by *Miller v. Alabama, supra*, 132 S.Ct. 2455 for individualized sentencing – youthfulness, background, role in offense, ability to deal with legal system, and potential for rehabilitation – the procedures at my sentencing did not comply with *People v. Gutierrez, supra*, 58 Cal.4th 1354 or *Miller*. Under the authorities cited here, I ask that I be resentenced in conformity with those cases.

I also request that counsel be appointed to represent me at proceedings ordered by this court. (Cal. Rules of Court, rules 4.551(c)(2), 8.385(f).) I am indigent and am unable to hire my own attorney.

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<sup>2</sup>*People v. Moffett* was the first published decision after *Miller* to disagree with *Guinn*. It was decided October 12, 2012, and was published at 209 Cal.App.4th 1465 until granted review on January 3, 2013. It was a companion case to *Gutierrez* and was decided in the same opinion.

*People v. Siackasorn*, agreeing with *Moffett*, was decided December 7, 2012. It was published at 211 Cal.App.4th 909 until granted review on March 20, 2013. Review was dismissed after the Supreme Court decided *Gutierrez*.

*People v. Dubose* was decided March 25, 2014, shortly before *Gutierrez*, which was decided May 5, 2014. Published originally at 224 Cal.App.4th 1416, it was depublished on July 9, 2014, upon denial of review.

**CHECK:** Carefully check everything in this Attachment, both the parts already printed and everything added by you, for accuracy. Make any needed corrections.

**SIGN AND DATE:** Sign and date the Verification of Attachment below on this page.

**ATTACH:** Add all pages of this Attachment to your form MC-275.

**COMPLETE AND CHECK MC-275 FORM:** If you have not completed and signed your form MC-275, do that next. Follow the "Instructions for a *Gutierrez* Habeas Corpus Petition" handout. Check everything again when done.

## VERIFICATION OF ATTACHMENT

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

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*(Date)*

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*(Signature of petitioner)*