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**Materials for habeas corpus petition asking for *Gutierrez* resentencing, in a case with a final judgment and a sentence of life without possibility of parole under Penal Code section 190.5, for a crime committed when the defendant was under 18**

This letter introduces ADI's materials for a petition for resentencing under the California Supreme Court decision of *People v. Gutierrez* (2014) 58 Cal.4th 1354.

*Gutierrez* interpreted Penal Code section 190.5, subdivision (b), California's law on punishing special circumstance murders by juveniles. California courts had thought section 190.5(b) makes LWOP "generally mandatory" unless the sentencing court found 25-life more appropriate. In *Gutierrez* the California Supreme Court disagreed. It ruled section 190.5(b) does not prefer one sentence over the other, but rather allows a free choice, taking into account the defendant's young age, background, participation in the crime, and other personal factors, as required by *Miller v. Alabama* (2012) 567 U.S. \_\_\_\_ [132 S.Ct. 2455, 183 L.Ed.2d 407]. *Miller* 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.

**Enclosed materials**

Appellate Defenders, Inc. (ADI), has prepared the enclosed materials to help defendants who have no attorney because their cases are final – meaning the appeal is over or the time for appealing is past. They are intended for your use if: (1) the crime for which the sentence was imposed was committed when you were a minor and (2) your sentence is life without possibility of parole. *Do not use the materials unless your case fits both of these categories*; instead, ask ADI whether it has materials for your situation.

The materials are to be used in preparing a petition for a writ of habeas corpus asking for resentencing under *Gutierrez*. They include the standard habeas form MC-275, an Attachment for completing the section on why the sentence was improper, and instructions for both.

The ADI materials are necessarily very general: they just lay out important recent cases and some broad legal principles. *They were not written for a specific case and therefore do not talk about the facts in your case. Providing those is your job, and it is in many ways the key part of your petition.*

**Legal representation**

Once your trial and direct appeal are over, you no longer have the right to an appointed lawyer to file new petitions, including habeas corpus. ADI is not able to represent you or assign an attorney to do it. Because ADI is not your attorney, it cannot analyze your particular case or give you legal advice. Unless you find an attorney to help you, it is up to you personally to complete and file the petition. If the court finds your petition states facts that may entitle you to relief, it will then appoint a lawyer.

**Possible risks**

There is always some risk in reopening a case or attaching documents to something filed in court. Errors in your favor could be discovered and corrected, or something incriminating might come up, leaving you worse off than before you took action. If you have any doubts, consult your former trial or appeals lawyers, who are familiar with your case and may be able to help.

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Encl: Judicial Council Habeas Corpus Petition Form (MC-275)  
Attachment: Answers to Question 6, Grounds for Relief  
Instructions for a *Gutierrez* Habeas Corpus Petition

**IMPORTANT**

These materials are **not legal advice** to you. Your use of the ADI materials does not create an attorney-client relationship between you and ADI or anyone at ADI. The statements in the materials are not guaranteed to be complete or free from error or up to date (the law is constantly changing). So you may use them only at your own risk and should always check to make sure what you are saying in your petition is correct and up to date, both as to fact and law. *If you do not agree to these conditions, you may not use these materials.*