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Materials for habeas corpus petition asking for *Vargas* resentencing, in a case with a final judgment pursuant to the Three Strikes law, where two prior strike convictions were based on the same criminal act.

Thank you for inquiring about resentencing under the California Supreme Court decision in *People v. Vargas* (2014) 59 Cal.4th 635. That case found that when a trial court is sentencing a defendant under the Three Strikes law and there are two prior strike convictions based on the same criminal act, the trial court is *required* to dismiss one of the priors and defendant should be sentenced as a two-striker. It is important to note, that if you have more than two strike convictions (prior strikes beyond the two that are based on the same act), you will likely not benefit from *Vargas* relief because your three-strike term would still be supported by your prior strike convictions.

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) you were sentenced to a three-strike term of 25 years to life and (2) two but no more than two of your prior strike convictions are based on the same act. *Do not use the materials unless your case fits both 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 *Vargas*. 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. It is up to you 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.

Thank you again for asking. We wish you the best in your efforts.

APPELLATE DEFENDERS, INC.

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