

## UNITED STATES COURT OF APPEALS

APR 16 2014

## FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

OSCAR RODRIGUEZ,

Petitioner - Appellant,

v.

DANIEL PARAMO, Warden,

Respondent - Appellee.

No. 10-55104

D.C. No. 8:06-cv-00878-VAP-  
MANCentral District of California,  
Santa Ana

ORDER

Before: GOULD and RAWLINSON, Circuit Judges, and LEMELLE, District Judge.\*

The memorandum disposition in the above-captioned matter filed on January 13, 2014 is amended as follows:

At page 4, line 14, insert a new paragraph stating: <Appellant further contends that the use of jury instructions in his trial that were based on the holding of *Johnson* violated his due process rights because of what he describes as later shifts in the law. However, because *Johnson* was not overruled by *Howard* and there is no indication that the amended version of section 2800.2 was intended to operate retroactively, the state courts' reliance on *Johnson* in upholding appellant's

---

\* The Honorable Ivan L.R. Lemelle, District Judge for the U.S. District Court for the Eastern District of Louisiana, sitting by designation.

conviction did not violate his right to due process. The district court did not err in denying his petition for habeas corpus on this ground.>.

The panel has voted to deny the petition for panel rehearing. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are denied.

No future petitions for rehearing or rehearing en banc will be entertained.

**IT IS SO ORDERED.**