

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

STEVEN ANTHONY ALVAREZ — PETITIONER - PRO SE

VS.

M. E. SPEARMAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

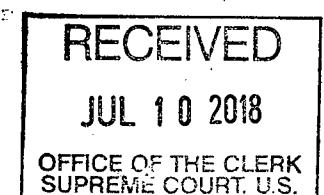
PETITION FOR WRIT OF CERTIORARI

STEVEN ANTHONY ALVAREZ - AV5246

HIGH DESERT STATE PRISON  
P.O. BOX 3030

SUSANVILLE, CA 96127

PETITIONER IN PRO SE



QUESTION(S) PRESENTED

1.

WHETHER PETITIONER WAS DENIED DUE PROCESS OF LAW,  
WHEN PROSECUTOR MISSTATED LAW, MISSTATED TESTIMONY,  
AND MISSTATED EVIDENCE TO THE JURY?

2,

WHETHER CALIFORNIA LAW OF THE DEFINITION OF  
"GREAT BODILY INJURY" IS UNCONSTITUTIONALLY VAGUE?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B,C to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Court of Appeal, Superior court appears at Appendix E,F to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MARCH 30, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

AMENDMENT V

NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW.

UNITED STATES CONSTITUTION

AMENDMENT XIV

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY<sup>II</sup> OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

## STATEMENT OF THE CASE

ON JANUARY 27, 2014, BLANCA FLOR MARGOLIS (BLANCA) AND I, STEVEN ANTHONY ALVAREZ (PETITIONER) WERE DATING AND WERE LIVING TOGETHER FOR A FEW YEARS. THE NIGHT BEFORE WE HAD SPENT THE NIGHT WITH FRIENDS AND WENT OUT TO A DANCE CLUB AND WE DRANK ALCOHOL ALL NIGHT IN TO THE NEXT MORNING.

THAT MORNING ON JANUARY 27, 2014, BLANCA HAD SEEN A PHOTO OF MY EX-GIRLFRIEND ON MY CELL PHONE AND BECAME VERY ANGRY WITH ME. SHE COMPLAIN TO OUR FRIENDS. THEY WERE UNCOMFORTABLE AND DECIDED TO LEAVE. IT WAS ABOUT 11:00am. BLANCA HAD CONTINUED TO DRINK ALCOHOL. I WAS SEATED AT THE KITCHEN TABLE PREPARING TO HAVE BREAKFAST, WHEN BLANCA CAME IN TO THE KITCHEN TO MAKE HER SOME BREAKFAST ALSO. I KNEW SHE WAS VERY UPSET WITH ME FOR KEEPING THE PHOTO OF MY EX-GIRLFRIEND ON MY PHONE, IN MY PHOTO ALBUM. WHEN SHE ENTERED THE KITCHEN, I CALLED HER OVER TO ME AS I WAS SEATED AT THE KITCHEN TABLE. AS SHE APPROACH I TOOK HER HAND IN MY HAND AND SAT HER ON MY LAP.

I TRIED TO CONSOLE BLANCA FOR MY LOVE FOR HER AND THAT THE PHOTOGRAPH OF MY EX-GIRLFRIEND MENT NOTHING TO ME. BUT SHE BECAME IRATE, AND BELLIGERENT WITH ME THAT SHE GOT UP OFF MY LAP ABRUPTLY AND WITH MUCH FORCE PULLED AWAY FROM ME WHICH CAUSE ME TO LOSE MY GRIP ON HER ARM THAT WITH THAT FORCE THAT SHE PULLED AWAY FROM ME, CAUSE HER TO BECOME DIZZY (BECAUSE BLANCA SUFFERS FROM A BRAIN TUMOR THAT CAUSE HER TO GET DIZZY AT TIME PLUS SHE WAS INTOXICATED) SHE FELL FORWARD, SLIPPING ON A RUG IN FRONT OF THE STOVE AND HITTING HER FOREHEAD ON THE CABINET DOOR WHICH CAUSE HER TO GET A TWO CENTIMETER CUT ABOVE HER LEFT EYEBROW. THE FALL PRODUCED A BRUISE ON HER

UPPER LEFT FOREHEAD IN A SQUARE SHAPE BY THREE BY THREE CENTIMETER, WHICH HER HOSPITAL'S DISCHARGE PAPERS SAY WAS CAUSED BY THE METAL PLATE IN BLANCA'S HEAD FROM HER PRIOR BRAIN SURGERY OPERATION IN 2009 TO REMOVE TWO TUMORS.

(ON JAN. 27, 2014 BLANCA IS STILL SUFFERING AN OTHER BRAIN TUMOR)

AT THIS POINT, I CAME TO HER AID. I WANTED TO LIFT HER UP BUT SHE HAD SAID TO GIVE HER A MOMENT. A FEW SECONDS LATER I PICKED HER UP INTO MY ARMS AND CARRIED HER INTO THE MASTER BATHROOM TO SIT HER IN THE SHOWER BENCH. I TURNED ON THE SHOWER TO CLEAR HER FACE OF BLOOD, BUT SHE START TO COMPLAIN ABOUT THE SHOWER WATER AND HER CLOTHS. SO I TOOK OFF HER CLOTHS AND GAVE HER A WASH CLOTH TO APPLY PRESSURE TO HER WOUND. SHE WAS STILL VERY IRATE WITH ME, THAT SHE WAS YELLING FOR ME TO GET OUT AND LEAVE HER ALONE. SO I WENT OUT OF THE BEDROOM AREA TO CALL MY MOTHER TO COME OVER TO HELP ME WITH BLANCA. MY MOTHER LIVED AROUND THE CORNER FROM MY APARTMENT AND WAS THERE WITHIN MINUTES.

AT THIS TIME THAT I HAD HELPED BLANCA TO THE MASTER BATHROOM A NEIGHBOR HAD CALL THE POLICE, CLAIMING TO HEAR HER NEIGHBORS WHERE HAVING AN ARGUMENT. THE POLICE ARRIVED AND ARRESTED ME FOR DOMESTIC VIOLENCE. I HAD FOUND OUT LATER THAT BLANCA HAD TOLD THE POLICE THAT I HAD BEATEN HER AND THAT IS HOW SHE GOT THAT CUT ABOVE HER LEFT EYEBROW. THAT SHE HAD SAID THAT I PUNCHED HER ON THE HEAD AND FACE MULTIPLE TIMES, THAT I HAD THROWN HER TO THE GROUND AFTER BOUNCING HER OFF THE KITCHEN APPLIANCES AND KICKED HER MULTIPLE TIMES BEFORE I GRABBED HER BY HER HAIR AND DRAGGED HER ACROSS THE LIVING ROOM AND MASTER BEDROOM WHITE CARPET INTO THE MASTER BATHROOM SHOWER WHERE I CONTINUED TO PUNCH AND KICK HER THREATING TO BEAT HER SOME MORE IF SHE GOT OUT OF THE SHOWER! THIS IS THE ACCOUNT THAT THE POLICE OFFICER SAID BLANCA REPORTED.

## PROCEDURE HISTORY

ON AUGUST 06, 2014. A JURY FOUND ME GUILTY, ON COUNT ONE OF CALIFORNIA PENAL CODE SECTION (PENAL CODE §) 273.5 OF WILLFULLY INFILCT CORPORAL INJURY RESULTING IN A TRAUMATIC CONDITION UPON BLANCA FLOR MARGOLIS, WHO WAS MY COHABITANT. THE JURY ALSO FOUND TRUE, PENAL CODE §12022.7 (e) THAT I PERSONALLY INFILCTED "GREAT BODILY INJURY" UPON BLANCA FLOR MARGOLIS UNDER CIRCUMSTANCES INVOLVING DOMESTIC VIOLENCE.

ON COUNT TWO OF THE INFORMATION OF PENAL CODE §245 (a)(4) ASSAULT WITH FORCE LIKELY TO PRODUCE "GREAT BODILY INJURY", A FELONY. THE JURY FOUND ME NOT GUILTY. (EXHIBIT A, PAGE 252) THE JURY DID FIND ME GUILTY OF THE LESSOR INCLUDED OFFENSE OF PENAL CODE § 240 AN ASSAULT ON BLANCA, A MISDEMEANOR.

ON COUNT THREE, PENAL CODE § 236, FALSE IMPRISONMENT WITH VIOLENCE, AND MENACE, A FELONY, THE JURY FOUND ME GUILTY.

ON DECEMBER 08, 2014, THE COURT IMPOSED SENTENCE AS FOLLOWS. TO COUNT ONE, THE UPPER TERM OF FOUR YEARS AND DOUBLED IT TO EIGHT YEARS PURSUANT TO PENAL CODE § 1170.12(a) through (d) and 667 (b) through (i). TO COUNT TWO, THE COURT IMPOSED A SIX MONTH IN THE COUNTY JAIL, BUT STAY THE TERM PURSUANT TO PENAL CODE § 654. ON COUNT THREE, THE COURT IMPOSED A ONE-THRID OF THE TWO YEAR MIDTERM AND DOUBLED IT FOR A TOTAL OF ONE YEAR, 4 MONTHS, TO RUN CONSECUTIVE.

IN ADDITION AND CONSECUTIVE, THE COURT IMPOSED A FIVE YEAR FOR A STATE PRISON PRIOR SUSTAINED IN PENAL CODE § 667 (a) SUBDIVISION (i). IN ADDITION AND CONSECUTIVE, THE COURT IMPOSED A FIVE YEAR FOR THE "GREAT BODILY INJURY" CONDUCT ENHANCEMENT INVOLVING DOMESTIC VIOLENCE. PURSUANT TO PENAL CODE § 12022.7 (e) WITH A TOTAL PRISON SENTENCE OF 19 YEARS, 4 MONTHS FOR AN ALLEGED MISDEMEANOR ASSAULT.

QUESTION(S) PRESENTED

1.

WHETHER PETITIONER WAS DENIED DUE PROCESS OF LAW,  
WHEN PROSECUTOR MISSTATED THE LAW,  
MISSTATED TESTIMONY AND MISSTATED EVIDENCE  
TO THE JURY?

THE DEPUTY DISTRICT ATTORNEY DEBORAH SHAW SCOTT (DEPUTY D.A. MS. SCOTT) THEORY OF THE CRIME AS STATED OR WRITTEN IN THE POLICE REPORT IS THAT WHEN BLANCA HAD FOUND THE PHOTOGRAPH OF MY EX-GIRLFRIEND IN MY CELL PHONE THAT I BECAME ENRAGE AND ATTACK HER IN THE MIDDLE OF OUR KITCHEN, PUNCHING HER MULTIPLE TIMES ON HER HEAD AND FACE, THEN BOUNCING HER OFF THE KITCHEN APPLIANCES KNOCKING HER TO THE GROUND WHERE I THEN STARTED KICKING HER WHICH CAUSED A CUT ABOVE HER LEFT EYEBROW CAUSING A LOT OF BLOOD. THEN I GRABBED BLANCA BY HER HAIR AND DRAGGED HER ACROSS THE LIVING ROOM AND MASTER BEDROOM WHITE CARPET INTO THE MASTER BATHROOM, THROWING BLANCA INTO THE SHOWER AND STARTED TO PUNCH AND KICK HER SOME MORE. THEN THAT I HAD TOLD BLANCA TO STAY IN THE SHOWER OR I WILL BEAT HER SOME MORE. THE PROSECUTIONS ONLY EVIDENCE TO THIS THEORY AT TRIAL, WAS THE REPORTING OFFICER, HOSPITAL MEDICAL RECORDS, AND HOSPITAL'S SOCIAL WORKER WAS INTRODUCED FOR INCONSISTENT PRIOR STATEMENT.

BLANCA FLOR MARGOLIS TESTIMONY AT MY TRIAL (EXHIBIT A, PAGE 6, 14-205, 269) WAS THAT WHEN SHE HAD FOUND THE PHOTOGRAPH OF MY EX-GIRLFRIEND PHOTO IN MY CELL PHONE THAT SHE BECAME ENRAGE, THAT SHE HAD THOUGHT THAT I WAS BEING UNFAITHFUL IN OUR RELATIONSHIP AND THAT SHE WAS VERBALLY ABUSIVE TOWARDS ME. THAT I HAS TRIED TO CALM HER DOWN FROM BEING SO ANGRY WITH ME. SHE TESTIFIED THAT SHE WAS VERY DRUNK AND THAT SHE DID NOT WANT ANYTHING

TO DO WITH ME. THAT I HAD CALLED HER OVER TO ME TO DISCUSS OUR RELATIONSHIP, I WAS SEATED AT THE KITCHEN TABLE AND SAT BLANCA ON MY LAP. SHE STATED THAT SHE WAS SO IRATE WITH ME THAT SHE DID NOT WANT TO HEAR ANY MORE TO WHAT I WAS TELLING HER AND SHE WANT TO GET IN HER CAR AND DRIVE TO SOME OTHER PARTY. THAT I PLEADED WITH HER NOT TO DRIVE DRUNK AT WHICH POINT SHE GOT UP OFF MY LAP ABRUPTLY PULLING AWAY FROM MY ENBRACE WITH MUCH FORCE, CAUSING HER TO BECOME DIZZY AND SLIP ON A RUG IN FRONT OF THE STOVE CAUSING HER TO FALL TO THE GROUND HITTING HER FACE ON THE KITCHEN CABINET DOOR SHE HAD OPEN. WHEN SHE HAD HIT HER FACE ON THE CABINET DOOR, IT HAS CAUSE A TWO CENTIMETER CUT ABOVE HER LEFT EYEBROW. BLANCA THEN STATED THAT I PICK HER UP IN MY ARMS TOOK HER TO THE MASTER BATHROOM TO CLEAN HER UP. THAT I HAD TAKEN OFF HER CLOTHS BEFORE PUTTING HER INTO THE SHOWER TO TRY TO SOBBER HER UP. THAT SHE WAS SO ANGRY WITH ME THAT SHE DID NOT WANT ME TO HELP, BUT SHE COMPLIED WITH MY DIRECTIONS.

BLANCA FLOR MARGOLIS THEN STATED THAT I HAD LEFT HER ALONE IN THE SHOWER TO CALL MY MOTHER FOR ASSISTANCE WITH HER. THAT I HAD RETURNED TO HER SIDE AT THE SHOWER TO CHECK ON HER. THEN THERE WAS A KNOCK AT THE DOOR AND I TOLD HER THAT I WILL BE RIGHT BACK. THAT IS WHEN SHE SAID THAT MY MOTHER CAME IN TO THE BEDROOM TO ASSIST HER, WITH HOLDING A TAMRON TO HER FACE, THAT SHE GOT UPSET THAT MY MOTHER WOULD DO THIS. THAT I THEN TOLD MY MOTHER NOT TO DO THIS. THAT IS WHEN AN OTHER KNOCK WAS AT THE FRONT DOOR. THAT I HAD LEFT THE ROOM TO ANSWER THE DOOR. A FEW MINUTES LATER A POLICE OFFICER APPEARED, AND SHE SAW HER CHANCE TO GET AWAY FROM MY MOTHER AND I. THAT SHE TOLD THE POLICE THAT I HAD BEAT HER. SHE TESTIFIED THAT SHE HAD MADE THIS FALSE REPORT TO MAKE ME PAY FOR CAUSING HER EMOTIONAL HEARTACH. THAT SHE WAS BEING VINDICTIVE. THAT SHE DID NOT KNOW THE CONSEQUENCE OF HER ACTION WOULD PUT ME IN SUCH JEOPARDY WITH THE LAW AS IT DID. THE JURY FOUND ME NOT GUILTY OF THE PROSECUTIONS THEORY TO COUNT TWO OF THE INDICTMENT. DEPUTY D.A. MS. SCOTT IN HER CLOSING

ARGUMENT SHE MISSTATED THE LAW AND THE DEFINITION OF THE ELEMENT OF THE CRIME OF ASSAULT THE USE OF FORCE. CALIFORNIA CASELAW STATES "FOR THE DEFENDANT TO PERSONALLY INFILCT INJURY, THE ACTOR MUST DO MORE THAN TAKE SOME DIRECT ACTION WHICH PROXIMATELY CAUSE INJURY". (PEOPLE V. RODRIGUEZ, 69 Cal. App. 4th 341, 349, 81 Cal. Rptr. 2d 567 (1999)). DURING THE CLOSING ARGUMENT DEPUTY D.A. MS. SCOTT STATED " JUST ON THING, THE PRELIMINARY HEARING VERSION IS ESSENTIALLY, I BELIEVE I MENTIONED DURING OPENING, IT'S ESSENTIALLY ADMITTING THE SAME CRIME. IT'S REALLY NOT DIFFERENT ENOUGH. AS SHE DESCRIBED THE EVENTS DURING THE PRELIMINARY HEARING, THAT'S STILL A CRIME. SHE DESCRIBED BEING FORCED INTO HIS LAP, PULLING AWAY FROM HIM, PULLING WITH ALL HER MIGHT, HE IS HOLDING ONTO ONE HAND, SHE'S LEANING FORWARD, AND WE REMEMBER HOW SHE GOT HER MEDICAL CONDITIONS, AND WHATNOT, WHICH SHE IS WELL AWARE OF, AND AS SHE'S LEANING FORWARD AND HE IS HOLDING ONTO HER HAND, SHE SCREAMS AT HIM TO LET GO, OR CURSES AT HIM OR SOME SUCH THING, AND HE LET'S GO AND SHE GOES SLIDING ACROSS THE ROOM. IT'S NOT THE PEOPLE'S POSITION THAT'S THE TRUTH, BUT IT'S THE PEOPLE POSITION THAT IS ALSO A VIOLATION OF THE EXACT SAME CRIME. THE SAME CRIME THAT IS A VIOLATION OF THAT AS WELL BECAUSE HE KNEW THAT LETTING GO OF HER IN THAT WAY WAS LIKELY TO CAUSE GREAT BODILY INJURY. HER SLIPPING ON SOMETHING, FALLING AGAINST THE FURNITURE, IT'S EXACTLY THE SAME CRIME AS IF HE BEAT HER. I CONSIDER THAT'S KIND OF THE SLINGSHOT VERSION THAT SHE GAVE DURING THE PRELIMINARY HEARING,."

FOR THE PROSECUTION TO TIE HER THEORY AND WHAT BLANCA STATED THAT IT WAS AN ACCIDENT AS BLANCA'S VERSION OF THE EVENT AS IT HAPPENED AS THE SAME CRIME AS IF HE BEAT HER. "CRIMINAL LAW HAS ITS OWN PARTICULAR WAY OF DEFINING CAUSE. A CAUSE OF INJURY IS AN ACT THAT SETS IN MOTION A CHAIN OF EVENTS THAT PROCEED A DIRECT, NATURAL AND POSSIBLE CONSEQUENCE OF THE ACT, THE INJURY, AND WITHOUT WHICH THE INJURY WOULD NOT OCCUR". (69 Cal. App. 4th at 347. RODRIGUEZ).

WHEN DEPUTY D.A. MS. SCOTT CHARACTERIZED BLANCA'S TESTIMONY AS THE SLINGSHOT VERSION, MISREPRESENTS HER TESTIMONY. THE DEFINITION OF SLINGSHOT IN THE WEBSTER DICTIONARY IS "A LOOPEP STRAP IN WHICH A STONE IS WHIRLED AND THEN LET FLY". BLANCA'S TESTIMONY SHE NEVER SAID THAT I WHIRLED HER ACROSS THE KITCHEN. SHE STATED THAT SHE GOT UP OFF MY LAP ABRUPTLY AND PULL AWAY FROM ME WITH FORCE AS I SAT IN A CHAIR.

THROUGH OUT THE PROSECUTION CLOSING STATEMENT SHE WOULD MENTION THE SLINGSHOT VERSION FOUR TIMES (EXHIBIT A, Pg. 209-228) "SO CLEARLY IF HE'S PUNCHING HER AND KICKING HER, OBVIOUSLY HE KNOWS HE'S APPLYING FORCE TO HER. IF HE TREATS HER LIKE A SLINGSHOT AND LAUNCHES HER ACROSS THE KITCHEN, THEN HE WOULD BE AWARE OF FACTS THAT A REASONABLE PERSON WOULD KNOW THAT WOULD CAUSE FORCE TO BE APPLIED. SO EITHER WAY THAT WOULD APPLY. AND THIS COUNT WOULD ALSO APPLY TO BEHAVIOR, BOTH OF THESE COUNTS, THE DOMESTIC VIOLENCE CHARGE, COUNT 1 AND 2, BOTH ALSO APPLY TO THE HITTING AND KICKING THAT TOOK PLACE IN THE SHOWER. IT'S REALLY ALL ONE CONTINUOUS SEQUENCE OF EVENTS."

IF THE PROSECUTIONS POSITION IS THAT COUNT 1 AND COUNT 2 IS A CONTINUOUS SEQUENCE OF EVENTS AND I WAS FOUND NOT GUILTY OF COUNT 2, THAT WOULD MEAN THAT MY GUILTY VERDICT ON COUNT 1 IS VOID. BECAUSE BOTH CHARGES DO HAVE THE SAME ELEMENTS.

NOW TO COUNT 3, DEPUTY D.A. MS. SCOTT STATED AT CLOSING "I KNOW SHE SAID SHE BELIEVED HE WOULD BECAUSE SHE HAD ALREADY TRIED TO GET OUT, HE GRABBED HER, THREW HER BACK IN, AND THERE WAS THE WHOLE PUNCHING, KICKING THAT WENT ON IN THE SHOWER AS WELL. SHE WAS INJURED. SHE WAS HURTING, THERE WAS AT LEAST AN IMPLIED THREAT, ESPECIALLY AFTER HE HAD THROWN HER BACK IN, THERE WAS AN IMPLIED THREAT IF SHE GOT OUT AGAIN THERE WAS GOING TO BE MORE OF THE SAME. AND HE DID TELL HER DIRECTLY, STAY IN THERE. SO I DON'T KNOW IF THAT NECESSARILY A DIRECT THREAT, BUT DEFINITELY AN IMPLIED THREAT IF YOU DON'T STAY IN THERE YOU'RE GOING TO GET KICKED AND BEATED SOME MORE".

BLANCA'S TESTIMONY ABOUT COUNT 3 IS AS FOLLOWS "QUESTION: DID YOU TELL THE OFFICER THAT AT THE POINT THAT YOU BEGAN TO GET OUT OF THE SHOWER, THAT HE GOT UPSET AGAIN, STARTED HITTING AND PUNCHING YOU AGAIN? ANSWER: NO. QUESTION: DID THAT HAPPEN? ANSWER: NO. QUESTION: DID YOU TELL THE OFFICER THAT AFTER HE STARTED HITTING AND PUNCHING YOU AGAIN, THAT HE THEN THREW YOU BACK INTO THE SHOWER? ANSWER: NO QUESTION: YOU DIDN'T SAY THAT? ANSWER: DON'T RECALL MY -- THAT STATEMENT. QUESTION: DID THAT HAPPEN? ANSWER: NO, IT DID NOT HE DID NOT WANT ME OUT OF THE SHOWER BECAUSE SOMEONE WAS AT THE DOOR. HE SAID HE WOULD BE RIGHT BACK. QUESTION: DID YOU TELL THE OFFICER THAT YOU WERE AFRAID TO LEAVE THE SHOWER? ANSWER: NO, QUESTION: WERE YOU AFRAID TO LEAVE THE SHOWER? ANSWER: NO, MA'AM."

DEPUTY D.A. MS. SCOTT WOULD MISSTATE BLANCA'S TESTIMONY THROUGH OUT HER CLOSING STATEMENT. SHE ALSO MISSTATED OTHER EVIDENCE THAT WAS INTRODUCE TO TRY TO INFLAME THE JURY'S PASSION AND BIAS. SHE MADE RACIAL REMARKS IN HER OPENING AND CLOSING, AND REBUTTAL STATEMENTS TO THE JURY. SHE STATED " WHICH IS NOT TO SAY YOU EXPECT ALL THE PARTIES TO BEHAVE IN A REASONABLE MANNER, BECAUSE IN THIS CASE THE PRIMARY PARTIES, AS A GROUP, ARE NOT THE MOST REASONABLE PEOPLE. YOU EXPECT THEM MORE TO REACT BASED ON THEIR PREVIOUSLY DEMONSTRATED DEMEANOR. (EXHIBIT A, Pg. 210) THEN SHE GOES ON TO SAY, "THE PEOPLE'S POSITION IS THAT THEY'VE, ALL THREE OF THEM, THIS WHOLE FAMILY OR GROUP, WHATEVER YOU CALL THEM, THEY'VE ALL BEHAVED HORRIBLY." (EXHIBIT A, Pg. 238-39). THIS WAS OFFENSIVE TO ME AND TO BLANCA, ASK SHE MADE A REMARK ABOUT IT IN HER VICTIM'S IMPACK STATEMENT ON PAGE 276, line 9-11, OF EXHIBIT A.

AN OTHER THING THAT MS. SCOTT STATED IN HER REBUTTAL WAS "THE REST OF US DON'T HAVE TO LIVE LIKE THAT. JUST BECAUSE THEY WANT TO ACT A FOOL DOES NOT MEAN EVERYONE ELSE HAS TO PUT UP WITH IT. IT PUTS ALL THE REST OF US IN DANGER. IT RUINS, REDUCES OUR QUALITY OF LIFE. AND THAT'S WHY WE NEED TO CARE. EVEN IF SHE DOESN'T WANT ANYTHING TO HAPPEN, THE REST OF US HAVE TO.

THERE IS COLLATERAL DAMAGE. THERE IS COLLATERAL DAMAGE IF WE ALLOW PEOPLE TO GET AWAY WITH BEHAVING IN THIS MANNER, OR ALLOW THE DEFENDANT, IN PARTICULAR, TO GET AWAY WITH THIS SORT OF BEHAVIOR". (EXHIBIT A, Pg. 237).

THERE IS ALSO DEPUTY D.A. MS. SCOTT'S BELITTLE OF BLANCA'S MENTAL ILLNESS. MS. SCOTT KNOWS VERY WELL OF BLANCA'S CONDITION SHE READ ALL OF THE DOCTOR'S REPORT. IN 2009 BLANCA HAD TWO TUMOR'S REMOVED FROM HER BRAIN, FRONT LEFT OF HER HEAD. ONE WAS THE SIZE OF A GRAPEFRUIT. THIS HAS CAUSED HER TO HAVE MEMORY ISSUES IN HER LIFE. DEPUTY D.A. MS. SCOTT STATED IN HER REBUTTAL ABOUT BLANCA'S MENTAL ILLNESS LIKE THIS. "THERE IS SHORT TERM MEMORY PROBLEMS. EVERY TIME YOU GET TO A POINT WHERE SHE DOESN'T WANT TO ADMIT SOMETHING, SHE IS SAYING SOMETHING DIFFERENT FROM WHAT SHE HAD SAID TWO DAYS BEFORE, OR SHE'S SAYING DIFFERENT FROM WHAT SHE HAD SAID MAYBE AT THE PRELIM, OH, I HAVE SHORT TERM MEMORY PROBLEMS. THAT'S THE ONLY TIME SHE INDICATED SHE HAD SHORT TERM MEMORY PROBLEMS IS WHEN SHE GOT CAUGHT IN A LIE OR IN A MAJOR DISCREPANCY. THE ONLY TIME. OTHER THAN THAT, HER MEMORY WAS PERFECT. IT WASN'T AS IF YOU ASK HER A QUESTION AND SHE WOULD FORGET ABOUT IT. THAT'S SHORT TERM MEMORY. IF SOMEONE CAN'T REMEMBER FROM ONE MINUTE TO THE NEXT TO, WHAT THEY JUST SAID, THAT IS NOT AT ALL WHAT WAS GOING ON. THERE IS NO EVIDENCE OF THAT WHATSOEVER THROUGHOUT HER TESTIMONY. THE ONLY TIME SHE MENTIONED -- CITED SHORT MEMORY PROBLEMS IS WHEN SHE DIDN'T WANT TO ADMIT SHE HAD CHANGED UP HER STORY, EITHER FROM LAST FRIDAY TO YESTERDAY, OR FROM THE PRELIMINARY HEARING TO HER TESTIMONY AT TRIAL". IT IS VERY OFFENSIVE TO PEOPLE LIKE MYSELF THAT HAVE TAKEN CARE OF SOMEONE WITH A MENTAL ILLNESS.

TO THE PURSUIT OF HAPPINESS AS GUARANTEED UNDER THE DECLARATION OF INDEPENDENCE, AND THEIR RIGHT TO PURSUE AN HONEST LIVING FREE FROM ARBITRARY AND UNNECESSARY INTERFERENCE AS PROTECTED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. A CRIMINAL DEFENDANT HAS A CONSTITUTIONAL RIGHT NOT TO BE CONVICTED EXCEPT ON THE BASIS ON THE EVIDENCE ADDUCED AT TRIAL.

PROSECUTORS MUST NOT DURING CLOSING ARGUMENT FLATLY MISSTATE TESTIMONY SO AS TO MAKE IT APPEAR THAT THE PERMISSIBLE INFERENCE WAS AFFIRMATIVELY STATED BY A WITNESS. MAKING UNSUPPORTED FACTUAL CLAIMS, IS DEFINITELY IMPROPER. PROSECUTION REPEATEDLY ASKED THE JURY TO USE THEIR COMMON SENSE IS IMPROPER. THE JURY MAY HAVE BEEN ADMONISHED TO DISREGARD THE LAWYERS STATEMENTS ARE NOT EVIDENCE. BUT THE PROSECUTION, REPEATEDLY MISSTATEMENTS OF FACT WENT UNCORRECTED. THE JURY LIKELY ACCEPTED THE GOVERNMENT'S CHARACTERIZATION OF THE EVIDENCE AS A GIVEN. BLANCA'S TESTIMONY DIFFERED FROM THE PROSECUTION'S RECITAL, THE JURY LIKELY WOULD HAVE SPECULATED THAT THE PROSECUTOR'S MISSTATEMENT HAD AT LEAST SOME FACTUAL BASIS, THAT IS, THAT THE PROSECUTOR KNEW THE STATEMENT WAS SO, EVEN IF THERE WAS NO SUCH TESTIMONY. FOR THAT REASON, ASSURING THE JURY THAT FACTS NOT IN EVIDENCE SUPPORT THE GOVERNMENT'S CASE. IN ADDITION TO CONSTITUTING TRIAL ERROR, CAN VIOLATE DEFENDANT'S RIGHT TO DUE PROCESS.

EVIDENCE MATTERS, CLOSING ARGUMENT MATTERS, STATEMENTS FROM PROSECUTOR MATTER A GREAT DEAL. THE PROSECUTOR'S FALSE ACCOUNT OF BLANCA'S TESTIMONY WAS REASONABLY PROBABLE WAS THE CAUSE OF MY CONVICTION.

"THE COMMENTS AT CLOSING CLEARLY MISSTATED EVIDENCE, BY EXPLICITLY AND IMPLICITLY. MISSTATING THE EVIDENCE FROM TRIAL IS A PARTICULARLY PREJUDICIAL FORM OF MISCONDUCT, BECAUSE IT DISTORTS THE INFORMATION THE JURY IS TO RELY ON IN REACHING A VERDICT"  
(Darden v. Wainwright, 477 U.S. 168, 181-82)

WHETHER CALIFORNIA LAW OF THE DEFINITION  
OF "GREAT BODILY INJURY" IS UNCONSTITUTIONALLY VAGUE?

CALIFORNIA PENAL CODE SECTION 12022.7(f) GREAT BODILY INJURY  
MEANS A SIGNIFICANT OR SUBSTANTIAL PHYSICAL INJURY.

THIS LAW DOES NOT AFFORD ORDINARY PEOPLE A FAIR NOTICE OF THE CONDUCT IT PUNISHES. I HAVE A LIBERTY INTEREST, JUST AS EVER OTHER CALIFORNIAN THAT IS BEING PROSECUTED OR WILL BE PROSECUTED. CALIFORNIA PENAL CODE SECTION 243 SECTION (f)(4) STATES : "SERIOUS BODILY INJURY" MEANS A SERIOUS IMPAIRMENT OF PHYSICAL CONDITION, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING: LOSS OF CONSCIOUSNESS; CONCUSSION; BONE FRACTURE; PROTRACTED LOSS OR IMPAIRMENT OF FUNCTION OF ANY BODILY MEMBER OR ORGAN; A WOUND REQUIRING EXTENSIVE SUTURING; AND SERIOUS DISFIGUREMENT.

THIS IS IMPORTANT BECAUSE THIS SERIOUS BODILY INJURIES ARE NOT A STRIKEABLE OFFENSE AS DEFINE BY CALIFORNIA'S THREE STRIKES LAW SAYS. BUT WITH CALIFORNIA'S GREAT BODILY INJURY LAW WILL ENHANCE A PERSONS SENTENCE. JUST AS JUSTICE GORSUCH STATED IN DIMAYA THAT VAGUE LAWS INVITE ARBITRARY POWER...BY LEAVING PEOPLE IN THE DARK ABOUT WHAT THE LAW DEMANDS AND ALLOWING PROSECUTORS AND COURTS TO MAKE IT UP.

CALIFORNIA LEGISLATURE NEEDS TO GIVE A BETTER DEFINITION OF GREAT BODILY INJURY AND THAT DEFINITION HAS TO GREATER THEN THE DEFINITION OF A SERIOUS BODILY INJURY. THE JURY INSTRUCTIONS ON GREAT BODILY INJURY DOES NOT HELP A JURY TO HAVE AN INFORMED DECISION WHEN SOMEONE IS BEING ACCUSED OF

THIS CRIME OF GREAT BODILY INJURY. THIS JURY INSTRUCTION STATES:

GREAT BODILY INJURY MEANS SIGNIFICANT OR SUBSTANTIAL PHYSICAL INJURY. IT IS AN INJURY THAT IS GREATER THAN MINOR OR MODERATE HARM. (EXHIBIT A, pg. 248) IT IS SO VAGUE THAT WHAT EVER THE PROSECUTION TELL THE JURY THE INJURY IS DEFINE AS A GREAT BODILY INJURY. THE JURY WILL CONVICT AND THE DEFENDANT WILL THEN GET A STRIKE FOR THE ALLEGED OFFENSE THAT OTHERWISE WOULD NOT BE A STRIKEABLE OFFENSE AND THEN SENT TO PRISON TO SERVE 80 PERCENT OF THEIR SENTENCE INSTEAD OF THE 50 PERCENT FOR A NON STRIKEABLE OFFENSE.

THIS LAW IS VOID FOR VAGUENESS UNDER JOHNSON, AND DIMAYA.

JOHNSON v. UNITED STATES, 576 U.S. \_\_\_\_ (2015)

SESSIONS v. DIMAYA, 138 S. Ct. 1204 (2018)

REASONS FOR GRANTING THE PETITION

I, STEVEN ANTHONY ALVAREZ REQUEST THAT THIS COURT WILL GRANT MY PETITION, SO THAT A MISCARRIAGE OF JUSTICE MAY BE CORRECTED. THAT THE SERIOUS ERROR'S IN MY CASE MAY BE CORRECTED TO MAINTAIN FAIRNESS, INTEGRITY AND REPUTATION OF THIS JUDICIAL PROCEEDINGS.

DATED JUNE 28, 2018  
SUSANVILLE, CA

RESPECTFULLY SUBMITTED,



STEVEN ANTHONY ALVAREZ  
PETITIONER IN PRO SE

## CONCLUSION

For the foregoing reasons and in the interest of justice,  
The petition for a writ of certiorari should be granted.  
DATED: June 28, 2018, Susanville, California.

Respectfully submitted,

  
STEVEN ANTHONY ALVAREZ  
PETITIONER IN PRO SE