

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

\_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

Oscar Kenneth Moreno — PETITIONER  
(Your Name)

vs.

Alana Cohen Butler — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeal of the State of California Fourth Appellate Dist. Division Two  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Oscar Kenneth Moreno CDC#AZ8254  
(Your Name)

C4-Cpod-#110 P.O. Box 2760  
(Address)

California City, Ca 93504  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

#### Question 1.

The Trial Presentation Violated My Sixth and Fourteenth Amendment Rights to Confront and Cross-Examine His Accusers.

Scientific Evidence of an alleged DNA Match was improperly admitted because the testifying witness was not the person who did the laboratory work, or testing.

#### Question 2.

This case should be remanded for resentencing in accordance with recently enacted Senate Bill 620 which amends penal code section 12022.53.

My Appeal was affirmed on two of the three issues, third issue being Senate Bill 620. Nothing in the Opinion does it state how the court decided on my third issue.

## 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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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bullcoming v. New Mexico (2011) 564 U.S. 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610	AE 7, AE 8
Chapman v. California (1967) 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705	<del>AE 11</del>
Crawford v. Washington (2004) 541 U.S. 36, 124 S. Ct. 1364, 158 L. Ed. 2d 177	AE 3, AE 5, AE 11
David v. Washington, U.S. Sup. Ct. 2006	AE 12
Douglas v. Alabama U.S. Sup. Ct. 1965	AE 10
Melendez-Diaz v. Massachusetts (2009) 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314	AE 5, AE 6, AE 7, AE 9
Pointer v. Texas (1965) 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923	AE 3
Strickland v. Washington (1984) 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674	AE 2

## STATUTES AND RULES

### California Statutes

Penal Code § 12022.53	8, AF 4, AF 10, AF 12, AF 13
Penal Code § 1385	AF 5, AF 10
Senate Bill 620	8, AF 10, AF 12, AF 13

### Federal Constitutional Provisions

Amendment 06	4, AE 2, AE 3, AE 10
Amendment 14	4, AE 2, AE 3

## OTHER

People v. Billingsley (2018) 22 Cal. App. 5th 1076	AF 12, AF 13
People v. Brown (2012) 54 Cal. 4th 314, 324 [142 Cal. Rptr. 3d 824, 278 P.3d 1182]	AF 10
In re Estrada (1965) 63 Cal. 2d 740 [48 Cal. Rptr. 172, 408 P. 2d 948]	AF 10
People v. Watts (2018) 22 Cal. App. 5th 102, 119 [Cal. Rptr. 3d ]	AF 10, AF 12
People v. Woods (2018) 19 Cal. App. 5th 1080, 1090-1091 [228 Cal. Rptr. 3d 318]	AF 12
Other California Cases to Senate Bill 620 in Supplemental Opening Brief	AF 3

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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 C to the petition and is

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

Court of Appeal of the State of California

The opinion of the Fourth Appellate District Division Two court 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.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ 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 May 23, 2018. A copy of that decision appears at Appendix C.

☐ 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 8.18.18 (date) on 10.18.18 (date) in Application No. \_\_\_\_ A \_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment - the amendment to the U.S. Constitution that entitles the accused in a criminal trial the right to a speedy trial by an impartial jury, to be informed of the charges against him or her, to be confronted witnesses against him or her, to have compulsory process for obtaining witnesses in his or her favor, and to have effective assistance of counsel. Through the process of selective incorporation, each of these rights has been applied to the states under the due process clause of the Fourteenth Amendment. While these rights form the foundation of the accused's right to a fair trial, the accused has been accorded additional rights, such as the right to conduct his or her own defense as necessary to a fair trial under the due process clause.

Fourteenth Amendment - one of the so called "Civil War Amendment" to the Constitution in that it was ratified after the Civil War; protects all person from state laws that attempt to deprive them of "life, liberty, or property, without due process of law," or that attempt to deny them equal protection of the laws. The amendment has been used to extend the protection of almost all of the provisions of the Bill of Rights to citizens of every state.

Senate Bill 620 - on October 11, 2017 the Governor signed Senate Bill 620 (2017-2018 Reg. Sess.), which amend section 12022.53 to give trial courts the authority to strike, in the interest of justice, a firearm enhancement allegation found true under that statute. Effective January 01, 2018, section 12022.53, subdivision (h), was amended to state: "The court may, in the interest of justice pursuant to section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law." Stats. 2017, ch. 682, § 2.).



## STATEMENT OF THE CASE

### Question 1.

Scientific Evidence of an alleged DNA match was improperly admitted because the testifying witness was not the person who did the laboratory testing.

The trial presentation violated my Sixth and Fourteenth Amendment Rights to Confront and Cross-Examine His Accusers.

Sir, or Madame Chief Justice of the United States Supreme Court,

During trial my Sixth, and Fourteenth Amendment Rights that the Constitution guarantees me giving me a fair trial were not protected. The Sixth Amendment prevents secret trials and subject to limited exceptions, forbids prosecutors from proving a defendant's guilt using oral or written statements from absent witnesses.

The Prosecution admitted a report that was prepared, and done by an absent witness. The report and its contents were done by criminalist Sarah Calvin. (AD pg. 25/24) Mr. Tanforan an expert

## STATEMENT OF THE CASE

witness is the criminalist who read from the report at trial. (AD pg 21) He did not observe, or perform any of the laboratory testing that was in the report. The United States Supreme Court has repeated its direction that trial courts not admit such evidence. (AE pg. 7-9) Mr. Tanforan only reviewed the documents of the laboratory testing done by Sarah Calvin, which is called a technical review. (AD pg 23-24) Mr. Tanforan who did not observe, or perform any of the DNA laboratory testing of the report testifies to a DNA match between myself and a recovered mask. (AD pg. 25-27) Both criminalist Mr. Tanforan, Ms. Calvin work at the Department of Justice at the Jan Bashinski Laboratory in Richmond, California. (AD pg. 21) (AD pg. 24)

Ms. Calvin was on the witness list to appear in court. (AE pg 1) She never appeared because she was sick with the flu. (AD pg. 8) (AD pg. 27) Ms. Calvin did not test the mask itself, but swabs that were reportedly reflected from the mask. Casey Hughes is another criminalist who reportedly took the swab from the mask, she works at the Forensic Laboratory in Riverside, California. (AD pg. 25) She also did not appear at

## STATEMENT OF THE CASE

Preliminary hearing, or at trial to be cross-examined. (AD pg. 34-35) (AD pg. 2 ) Instead Mr. Tanforan was allowed to testify in a criminal case to the DNA Laboratory Testing of the criminal analysts who were not in attendance. The Confrontation Clause guarantees that in criminal cases, defendants have the right to confront the witnesses against them. Here is the Preliminary hearing and Trial witness index showing analyst Sarah Calvin, and Casey Hughes not in attendance. (AD pg. 34-35) (AD pg. 1-2 )

Prosecutors cannot offer grand jury "testimonial" hearsay statements against defendants unless the person whose hearsay is offered testifies as a witness or unless the defendant has previously had a chance to cross-examine the person (say, during a preliminary hearing). Another United States Supreme Court case, not allowing such testimony, similar to what occurred at my trial (AE pg. 2-7 )

The Opinion states that even assuming the test results of the test are testimonial

## STATEMENT OF THE CASE

hearsay, their admission was harmless beyond a reasonable doubt. When the defendant was seen in the process of taking something off his head and about to throw it away. (AA pg. 15) Please also see. (AD pg. 13 )

In conclusion, I never had an opportunity to confront the DNA analysts and I had ineffective assistance of counsel by not objecting to protect my rights. I was sentenced to a term of 16 years, and 8 months, with 4 strikes in California. I am asking the United States Supreme Court for help. Please review my case.

## STATEMENT OF THE CASE

### Question 2.

This case should have been remanded for resentencing in accordance with recently enacted Senate Bill 620 which amends penal code section 12022.53.

My case was not yet finalized, and still pending on appeal when I filed my Supplemental Opening Brief on argument to Senate Bill 620. The date the brief was filed was February 26, 2018. (AF pg. 9 ) A copy of the Supplemental Opening Brief is listed in the Appendix. (AF pg. 1-9 ) My appeal was set for Oral Argument March 06, 2018 on other issues. One being the flight Instruction, and the Second being my Six Amendment. On March 09, 2018 my appeal was affirmed on the flight Instruction, and my Six Amendment. (AA pg. 2 ) Never is it stated in the Opinion how the courts decided on my third argument to Senate Bill 620 which amends penal code section 12022.53. Senate Bill 620 became effective January 01, 2018. I filed this argument February 26, 2018. My case was affirmed March 09, 2018 on two of the

## STATEMENT OF THE CASE

three issues, nothing in the Opinion affirming the third issue which is Senate Bill 620. Here is a case that the California Supreme Court decided on, that case having the same issues as mine, also this bill applies retroactively to cases not yet finalized on appeal. (AF pg. 10-13 ) Under appeal I have the right to have all my arguments heard that I believe there are issues with. These arguments have to be affirmed, or granted. None should be void with no decision.

In conclusion these are the two Questions of the Statements of the case, as concise as possible. I am asking and praying that the United States Supreme Court review my case. Thank You

### REASONS FOR GRANTING THE PETITION

I am asking the United States Supreme Court to exercise its discretionary jurisdiction and Grant Certiorari. My Sixth and Fourteenth Amendments Rights were not protected in the lower courts. Not one but, two criminal analyst who reportedly took DNA from a mask, and the other who performed the DNA analysis did not show to court. Instead another analyst who did not observe, or do any of the actual laboratory work read from a report that was prepared, and done by the two analyst who were not in attendance. The Confrontation Clause under the Sixth Amendment of the Constitution entitles the accused to be present at trial, and to hear and cross-examine all witnesses against him or her. Evidence that is not subject to confrontation, such as a report by the author who is not subject to cross-examination, may not be used against me. The Procedural Due Process of Law was not followed guaranteeing me a fair trial. Under protection of these rights is important not just for myself but for all people. The trial court improperly allowed a person who did not perform the laboratory testing of DNA to testify to a DNA match, in violation of recent decisions of the United States Supreme Court expressly disallowing such testimony. In the statements of the Case I show cases that are exactly like mine that the United States Supreme Court has

### **REASONS FOR GRANTING THE PETITION**

reversed. I am asking the judgment be reversed due to the denial of the fundamental right of confrontation and cross-examination.

Furthermore, my case was still pending on appeal when I filed the Supplemental Opening Brief on Senate Bill 620. It was filed timely, before the affirmation on the other two issues. The Court of Appeals did not state one word in the Opinion to my third issue which is Senate Bill 620. For additional relief this case should have been remanded for resentencing in accordance with recently enacted law, and recent court decisions which amends penal code 12022.53. I pray the United States Supreme Court Consider my case. Thank you.



### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Oscar Kenneth Moreno

Date: October 07, 2018