

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

20-6654

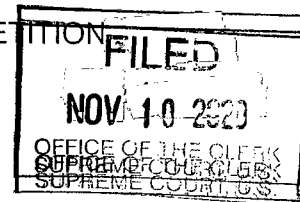
IN THE  
SUPREME COURT OF THE UNITED STATES

Gabino Andres Romero — PETITIONER

(Your Name)

vs.

C. Koenig — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

United States of Appeals For The Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gabino Andres Romero

(Your Name)

C.T.F. North A-4A-204 P.O. Box 705

(Address)

Soledad, CA 93960

(City, State, Zip Code)

N/A

(Phone Number)

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SUPREME COURT, U.S.**

#### QUESTION(S) PRESENTED

- ① Whether the 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendments of the Constitution of the United States was violated by jury misconduct, specifically, juror researched case prior to deliberation.
- ② Whether the 5<sup>th</sup> & 14<sup>th</sup> Amendments of the Constitution of the United States was violated by an abuse of discretion: trial Judge failed/refused to dismiss juror that conducted research prior to deliberation.
- ③ Whether the 5<sup>th</sup> Amendment of the Constitution of the United States was violated by the prejudice suffered by petitioner, jury misconduct where (juror conducted own investigation prior to deliberation).
- ④ Whether the 5<sup>th</sup> & 6<sup>th</sup> Amendments of the Constitution of the United States was violated by trial Counsel's failure to address the break in the "chain of evidence", (Spanish version of interrogation was not presented to the jury).
- ⑤ Whether California P.C. § 684 resulted in manifest constitutional errors in case no. 1447092 and B268565.
- ⑥ Whether California P.C. § 684 resulted in Deputy District Attorney's conflict of Interest in representing case no. 1447092 and B268565, to the People of the State of California impaneled in the jury. The same people of the State of California which Deputy District Attorney represented.
- ⑦ Whether title of Case No 1447092 and B268565 was prejudicial towards petitioner due to the fact at convening and reconvening of trial, title of the case instructed the People of the State of California that were impaneled in the jury that they were against the defendant. Currently petitioner herein.
- ⑧ Whether ineffective Assistance of Counsel contributed to petitioners conviction. Counsel failed to object to the constitutional error created by California P.C. § 684.

## 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:

XAVIER BECERRA  
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA  
501 I STREET, SUITE 7-600  
SACRAMENTO, CA 95814

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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 20-55264; 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 to the petition and is

☒ reported at 2:18-cv-06087-AB-RAO; 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 B to the petition and is

☒ reported at B268565; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ 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.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 17, 2020.

☐ 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

The Fourth Amendment of the United States Constitution, in pertinent part, provides: "... The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and on warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be search and the person or things to be seized..."

The Fifth Amendment of the United States Constitution, in pertinent part, provides: "No person... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law..."

The Sixth Amendment of the United States Constitution, in pertinent part, provides: In all criminal prosecutions, the accused shall enjoy... the Assistance of Counsel for his defense."

The Fourteenth Amendment, Sec. 1, to the United States Constitution, in pertinent part provides; that no state shall "... deprive any person of life, liberty, or property, without due process of law..."

The California Constitution, article 7, in pertinent part, provides: "(a) A person may not be deprived of life, liberty, or property without due process of law..."

The California Constitution, article 1, Sec. 13, in pertinent part, provides: "... The right of the people to be secure in their persons, houses, papers, and effects against unreasonable

Seizures and searches may not be violated; and a warrant may not issue except on probable cause supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized..."

The California Constitution, article I, sec. 15, in pertinent part, provides: "The defendant in a criminal cause has the right to ... have the assistance of Counsel for the defendants defense, ... or be deprived of life, liberty, or property without due process of law."

Here, each of the aforementioned Constitutional provisions have been / are violated.



## STATEMENT OF THE CASE

On July 16<sup>th</sup>, 2014, criminal case No. 1447092, filled against Gabino Andres Romero ("here in Petitioner"), Erroneously Citing: P.C... Further: It is of the utmost importance to note, that Petitioner will file a challenge against California Penal Code, § 684, (Unconstitutional State law). Petitioner would remind the Court, that this is a complex case that equates into too lengthy research. Covid-19, has prevented Petitioner's research from progressing in a timely fashion, so although not explicitly stated in previous pleadings the challenge to the constitutionality of California P.C. § 684 was implied.

California P.C. § 684, was enacted in the year of 1872, and has not underwent any amendments or revisions.

California P.C. § 684's, text, in pertinent part, provides: "... People as prosecuting party..." and "... A criminal action is prosecuted in the name of the people of the State of California, as a party, against the person charged with the offense..." Petitioner directs the Court's Attention to: California code of civil procedure, § 191, in pertinent part, provides: "... It is the Policy of the State of California that all persons selected for jury service be selected at random from the population served by the court..." California Jurors are selected from: "... People as prosecuting Party..." And "... People of the State of California, as a Party, against the person charged with the offense..." California's "Jury Pool" has been "Tainted" since California P.C. § 684's, enactment in 1872.

California's "Tainted Jury Pool" has not/is not addressed in any of the voir dore hearings in the Superior Court(s) throughout the state of California. Nor, pre trial, trial or post trial. Plaintiff(s) are impaneled in California's jury boxes, Plaintiff(s) are seated within the deliberation rooms throughout the States of California's Superior Court(s), and Plaintiff(s) are rendering verdicts throughout the State of California, pursuant to: California Penal Code, § 684.

California Penal Code, § 684, has created Conflicts of Interest for the District Attorneys and Deputy District Attorneys at the beginning of hearings and the convening and reconvening of trial state their names, then: "... representing the People of the State of California..." Pursuant to: California

P.C. § 684, that would be the same People of the State of California impaneled on the jury(s), so District Attorneys and Deputy District Attorneys represent the People of the State of California, along with representing their case to the People of the State of California.

California P.C. § 684, requires, that the title of criminal actions are announced at the beginning of hearings, convening and reconvening of trials(s). To reiterate, People of the State of California are impaneled on the jury(s), so when the title of the criminal action is announced: "... People of the State of California vs. The Named Defendant .. (Gabmo. Andres. Romero). ..." The Impartiality if any, is removed from the people of the State of California impaneled on the jury(s). Not to mention the presumption of innocence California P.C. § 684, in pertinent part provides: "... the People of the State of California, as a Party, against the person charged with the offense..." Triggered the "Confrontation Clause" of the Constitution of the United States. The Sixth Amendment of the Constitution of the United States guarantees a criminal defendant's right to confront an accusing witness face-to-face and to cross-examine that witness.

Supervisor Court(s) in the State of California do not have the budgets, personnel or resources to subpoena the People of the State of California in all criminal actions. California P.C. § 684, prevents the confrontation clause of the Constitution of the United States. Depriving criminal defendants of another constitutional protection.

California Penal Code, § 684, has not been addressed by any defense Attorneys, since its enactment in the year of 1872. [If it had California's judiciary would have had addressed the matter. No case law has been published]. Ignorance is No excuse under the law, defense Attorneys shall Not knowingly fail to disclose to the

1 tribunal legal Authority in the controlling jurisdiction not disclo-  
2 sed by opposing Counsel and known to the defense Attorney to  
3 dispositive of a Question at Issue and directly adverse to the  
4 position of the client... ignorance is No excuse for an Attorney,  
5 an Attorney cannot carry out the practice of law like an ostrich  
6 with it's head in the sand. Ignoring his/her duty to research and  
7 acknowledge adverse precedent and law. Attorneys are Not free to  
8 assert any and all arguments they wish on behalf of their clients with-  
9 out regard to existing precedent. Indeed, this requirement serves not  
10 only to protect the Court, but to protect the Client.

11 Case No's: 1447092 and B268565, establish, that the surr-  
12 ounding circumstances made it so unlikely that any lawyer could  
13 provide effective Assistance of Counsel that ineffectiveness was pro-  
14 perly presumed without inquiry into either counsel's actual performance  
15 at trial. United States v. Cronse, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed.  
16 2d 657 (1984) ("presumption of prejudice standard").

17 The Seriousness of the case require an injunction again-  
18 st Xavier Becerra, in his individual capacity to prevent enforce-  
19 ment of an unconstitutional State law, (California P.C. § 684),  
20 Ex parte Young, 209 U.S. 123, 28 S. Ct. 441, 1908 U.S. Lexis 1726, 52  
21 L. Ed. 714.

22 The circuit courts of the United States will restrain a State  
23 officer from executing an Unconstitutional State law, (California P.C. §  
24 684), when to excuse it would violate right and priveledges of the  
25 Complainant which had been guaranteed by the Constitution and  
26 work irreparable damage and injury to him. Ex parte Young, 209  
27 U.S. 123, 28 S. Ct. 441, 1908 U.S. Lexis 1726, 52 L. Ed. 714.

28 A suit against individuals for the purpose of preventing

1 them as officers of the state from enforcing an unconstitutional  
2 enactment, (California P.C., § 684), as - applied to case no's. 1447092  
3 and B268565, to the injury of the rights of plaintiff, is not suit  
4 against the state of California within the meaning of the 11<sup>th</sup>  
5 Amendment of the Constitution of the United States. Ex parte Young,  
6 209 U.S. 123, 28 S.Ct. 441, 1908 U.S. Lexis 1726, 52 L. Ed. 714.

7 Individuals, who, as officers of the United States of California,  
8 are cloth with some duty in regards to the enforcement of the  
9 laws of the state of California and who threaten and are about  
10 to commence proceedings, either of a civil or criminal nature,  
11 to enforce against parties affected an unconstitutional act,  
12 violating the federal constitution, may be enjoined by a fed-  
13 eral court of equity from such action. Ex parte Young, 209 U.S. 123,  
14 28 S.Ct. 441, 1908 U.S. Lexis 1726, 52 L. Ed. 714.

15 Suits against state officers that impact on the state  
16 itself are allowed to prevent enforcement of unconstitutional  
17 state action. Such suits are not considered suits against the  
18 state because the state cannot authorize officials to act in vio-  
19 lation of the federal constitution. The official acting unconstit-  
20 utional is therefore stripped of his official and representative chara-  
21 cter. This exception is necessary to permit the federal courts to vin-  
22 dicate federal rights and hold state officials responsible to the  
23 supreme authority of the United States. Thus, United States con-  
24 stitution Amendment XI Does Not bar an injunctive action  
25 against a state officer that is based on a theory that the  
26 officer acted unconstitutionally. Almond Hill School v. U.S. Dept.  
27 of Agriculture (9<sup>th</sup> Cir. 1985).

28 A plaintiff may sue a state official seeking prospective

1 injunctive relief from unconstitutional state action. Kentucky v.  
2 Graham, 473 U.S. at 167, 105 S.Ct. 3099, 87 L.Ed. 2d 114 n. 14; Ex  
3 parte Young, 209 U.S. 123, 159-60, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

4 This principal generally is referred to as the Ex parte Young Exce-  
5 ption and is limited to prospective injunctive relief from cont-  
6 inuing or impending state action which violates the Federal Cons-  
7 titution or a Federal Statute. Armstrong v. Wilson, 124 F.3d 1019,  
8 1026 (9th Cir. 1997).

9 Conclusion:

10 The court's oath to support the Constitution of the  
11 U.S., establishes its decision to enjoin, Xavier Becerra, (Attorney  
12 General of the State of California), from attempts to enforce an  
13 unconstitutional state law, (California Penal Code, § 684).

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15 Date: Nov. 8<sup>th</sup>, 2020

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Respectfully Submitted / Filed by  
  
x Gabino Andres Romero  
Petitioner In Pro Se

## REASONS FOR GRANTING THE PETITION

- I. The Trial Court violated Appellant's fourth, fifth and Sixth and fourteenth Amendment rights to a fair trial and due process by failing to instruct prospective jurors Not to conduct independent research about the case leading to some prospective jurors doing so and becoming prejudice against appellant by what they had learned, combined with the Court's comments and Questioning of those prospective jurors in open court.
- II. Because Counsel Failed to ensure the Prospective Jurors were Instructed Not to conduct Outside research, to Object to the Court's comments and to the Inadequacy of Court's Inquiry, Appellant was Denied his Sixth and Fourteenth Amendment Right to the Effective Assistance of Counsel.
- III. The Court erred in Not instructing the jury that it must Accept the english translation of Appellant's recorded Statement to Police as the evidence, even if they would translate it Differently.
- IV. Because Counsel failed to ensure the jury was properly Instructed that the English Translation was the evidence in this case, Appellant was Denied his Sixth and Fourteenth Amendment Right to the Effective Assistance of Counsel.
- V. Appellant's conviction of forcible rape must be reversed because the evidence was legally insufficient to prove the necessary element of penetration, that an evidentiary hearing be granted on grounds "I.C" and "I.D"; that the Court grant the Writ of Habeas Corpus and modify appellants sentence in accordance with P.C. § 1260 to the lesser included offence of attempted rape, upon which the jury was instructed.
- VI. any and all other appropriate relief created by P.C. § 684.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "G. A. B.", written over a horizontal line.

Date: Nov. 8<sup>th</sup>, 2020