

20-7499

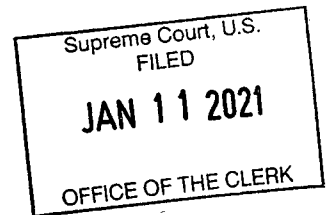
No. \_\_\_\_\_

ORIGINAL

Office of the Clerk

IN THE

SUPREME COURT OF THE UNITED STATES



Kevin Dean Brewer — PETITIONER  
(Your Name)

warden RJ Darvas  
(attorney general of alameda County) vs.  
(Deputy district attorney) — RESPONDENT(S)  
Brian Owens Bar 203715  
(1) attorney general of alameda County  
Michael T. O'Connor Bar 124655  
(2) Thomas J. Orloff  
(3) Martin A. Brown Bar 60684

ON PETITION FOR A WRIT OF CERTIORARI TO  
United States Court of Appeals  
for the Ninth Circuit no 20-16850

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

PETITION FOR WRIT OF CERTIORARI

Kevin Dean Brewer  
(Your Name) RJ Darvas Corr Facility

480 Alta Road  
(Address)

San Diego Calif 92179  
(City, State, Zip Code)

NDL  
(Phone Number)

### QUESTION(S) PRESENTED

Jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right

question presented

~~and that~~ <sup>2</sup>  
(are or the other)

and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling

Slack v. McDaniel 529 U.S. 473, 484 (2000)

## LIST OF PARTIES

~~X~~ All parties appear in the caption of the case on the cover page. (yes)

[ ] 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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APPENDIX C	appeal from u.s District Court for the northern Calif San Francisco
APPENDIX D	superior Court of California County of Alameda Reverend C Davidson Court House
APPENDIX E	notice of Demurrer and Demurrer penal Code section 1004(5) Law office of Andrea Auer
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## TABLE OF AUTHORITIES CITED

### CASES

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### STATUTES AND RULES

Penal Code section 859(a)  
People v Richardson (2007) 156 Cal App 4th 574 589 590

a demurrer must be filed before the entry of a plea and the failure to do so constitutes a waiver of all objection appearing on the face of the charging document except for lack of jurisdiction or failure to state a public offense see Cal Pen Code § 1002-03 see also  
In re Greer 108 Cal App 3d 1002, 1006 (1980)  
People v Schoeller 96 Cal App 2d 61, 62 (1950)

### 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 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.

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

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 11/23/2020.

☒ 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: ~~12/15/2020~~ 12/15/2020, 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 11/23/2020.  
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 12/07/2020  
11/23/2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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. 15mate filed a motion to appeal

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) petition was not a second or successive petition since the initial petition was dismissed without an adjudication on the merits
- (2) the court did not determine whether petitioner was entitled to a certificate of appealability and remanded the action for further proceedings
- (3) found at 28 U.S.C. § 2253(c) when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim a certificate of appealability should issue and an appeal of the district court order may be taken if the prisoner shows at least and that jurists of reason would find it ~~at least~~ debatable whether the district court was correct in its procedural ruling
- (4) thus ~~appeals~~ is the one initiated in the appellate court thus § 2253(c) governs appellate court proceedings filed after AEDPA's effective date
- (5) petitioner ~~satisfies~~ one of the reasonable jurists could conclude that the district court procedural ruling was wrong moreover
- (6) the prisoner should be allowed to proceed further
- (7) the principle that the court will not pass upon a constitutional question
- (8) although it is properly presented by the record
- (9) if the district court relies on procedural grounds to dismiss the petition in setting forth the preconditions for issuance of a COA under § 2253(c)

Barefoot v. Estelle 463 U.S. at 894 Williams v. Taylor 529 U.S. 200 (slip op. at 11)

Slack v. McDaniel

Supreme Court of the United States

Oct 4 1999 argued April 26 2000 decided

18 48-6322

after April 24 1996 the right to appeal is governed by the certificate of appealability requirement found at 28 U.S.C. § 2253(c) and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling



## STATEMENT OF THE CASE

NOLSE

**REASONS FOR GRANTING THE PETITION**

motion for senate bill No<sup>#</sup> 1134  
motion for senate bill  
motion for assembly bill No<sup>#</sup> 1909

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kurtis Dean Brewer

Date: 1/11/2021