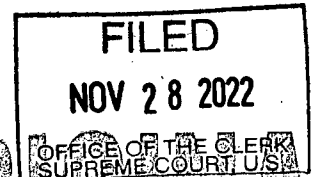


22-6251



No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ONOFRE TOMMY SERRANO
AKA AHADI ABJ-AL MUHAMMAD — PETITIONER
(Your Name)

vs.

ALEX VILLANUEVA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT FOR THE STATE OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

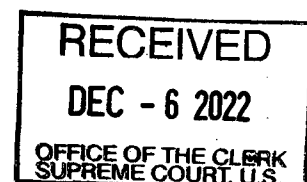
PETITION FOR WRIT OF CERTIORARI

Onofre Tommy Serrano
AKA Ahadi Abj-Al Muhammad
(Your Name)

441 Bauchet Street
(Address)

Los Angeles, CA. 90012
(City, State, Zip Code)

BLK # 6032688
(Phone Number)



QUESTION(S) PRESENTED

1. Whether the right to counsel has a "prompt" component, once it attaches mandating the court to appoint counsel to a indigent defendant without unnecessary delay?
2. Does the denial of the court to appoint counsel for 36 days taint the subsequent appointment of counsel and right to counsel, via conflict of interest?
3. Does the right to counsel provide for a reasonable amount of time to consult prior to representation at the "critical stage" which includes legal visits to the hospital or video teleconferencing, to converse with a client who is a medical miss-out and not appearing at court?

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:

Petitioner certifies that he is not a publicly-held corporation or other publicly-held entity. Petitioner does not have any parent corporations.

RELATED CASES

CALIFORNIA v SERRANO, Case No.: NA115520 (Superior Court)
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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 _____ 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☐ is unpublished.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 A to the petition and is

- ☒ reported at 2022 CAL. LEXIS 5193; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix 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 _____.

☐ 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 8/31/22.
A copy of that decision appears at Appendix A.

☐ 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

This case involves Amendments V, VI, VIII and XIV to the US Constitution, which provides:

NO person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation.

US Const., Amend., V

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor, and to have the Assistance of Counsel for his defence.

US Const., Amend., VI

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

US Const., Amend., VIII

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

US Const., Amend., XIV

This case also involves California Penal Code, section(s) 825(a)(1), 977(c)(1), 1270.1(b), 1271, and 1319(b), which provides:

Except as provided in paragraph (2), the defendant shall in all cases be taken before the magistrate without unnecessary delay,

And, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays.

Pen. Code § 825(2)(i).

A waiver of a defendant's appearance in person in a felony case must be by written waiver, executed in open court with leave of the court and approved by the defendant's counsel. (Approval of the prosecutor is not required). This requirement does not apply to misdemeanor cases.

Pen. Code § 977(c)(1)

The prosecuting attorney and defense attorney shall be given a two-court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.

Pen. Code § 1270.1(b)

If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

Pen. Code § 1271

(b) A defendant charged with a violent felony as described in subdivision (c) of Section 667.5, shall not be released on his or her own recognizance where it appears, by clear and convincing evidence, that he or she previously has been charged with a felony offense and has willfully and without excuse from the court failed to appear in court as required while the charge was pending. In all other cases, in making the determination as to whether or not to grant release under this section, the court shall consider all of the following:

(1) The existence of any outstanding felony warrants on the defendant.

(2) Any other information presented in the report prepared pursuant to Section 1318.1.

The fact that the court has not received the report required by Section 1318.1, at the time of the hearing to decide whether to release the defendant on his or her own recognizance, shall not preclude that release.

(3) Any other information presented by the prosecuting attorney.

Pen. Code § 1319(b).

STATEMENT OF THE CASE

The petitioner's writ of habeas corpus alleged that he was not appointed counsel on 10/19/20 which was 48 hours after his arrest for a felony warrant on 10/15/20 excluding Sundays and holidays.

Petitioner was imprisoned at the Los Angeles County-University of Southern California Medical Center ("LACMC") jail ward and made repeated requests to go to court, talk to an attorney and appear before a magistrate by two-way electronic audio-video communication due to his in custody status.

Petitioner remained an unrepresented party for 36 days until 11/30/20 while the right to counsel had attached due to a felony complaint on file in the superior court, but without the magistrate promptly formally appointing counsel. Petitioner was not present in court on 10/19/20, 10/20/20, 10/21/20 and 11/2/20 nor was any attorney formally appointed on the aforementioned dates the arraignment was continued. Petitioner was not informed by the court and/or any attorney that his arraignment was continued due to being a medical miss-out.

The petition for writ of habeas corpus which described the failure to appoint counsel was denied by the superior court. The superior court summarily denied the petition on the ground that: "the court did appoint counsel at petitioner's first appearance"; "[t]he court is unaware of any provision of law

that requires the appointment of counsel prior to arraignment. Indeed, a leading treatise in the area notes that different courts have different practices depending on the policies of the local public defenders office. (California Criminal Law and Procedure (Cal. CEB 2021) Section 6.18. p. 13.)"

The court of appeal denied the petition (Case No.: B320258) and the state supreme court denied the petition as well (Case No.: S275527).

REASONS FOR GRANTING THE PETITION

A.

THE SUPREME COURT OF THE STATE OF CALIFORNIA HAS DECIDED AN IMPORTANT FEDERAL QUESTION THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

1.

CONFLICTS WITH DECISIONS OF OTHER COURTS

The holding of the courts below that the right to counsel does not attach for opportunity for counsel to prepare in a criminal prosecution after the initiation of adversarial judicial proceedings is contrary to the holding of six federal circuits.

See *US v Leon-Delfis* 203 F3d 103, 110 (1st Cir.); *Matteo v Superintendent, SCI Albion* 171 F3d 877, 892-893 (3d Cir.); *Self v Collins* 973 F2d 1198, 1206 (5th Cir.); *US v Gallo-Moreno* 584 F3d 751, 759 (7th Cir.); *US v Red Bird* 287 F3d 707, 714 (8th Cir.); *US v McNeil* 362 F3d 570, 572 (9th Cir.).

In addition, two federal circuit courts held that the due process clause of the Fourteenth Amendment controls the issue of a pretrial detainee's right to a prompt appearance in court after arrest by warrant.

Hayes v Faulkner County 388 F3d 669, 673 (8th Cir.); *Coleman v Frantz* 754 F2d 719, 721 n.1 (7th Cir.), abrogated on other grounds by *Benson v Allphin* 786 F2d 268, 279 n. 26 (7th Cir.); *Accord Oriatt v Pearce* 954 F2d 1470, 1474-1475 (9th Cir.). The

Seventh Circuit explained that while the "language in *Geerstein* helps to establish the depth of constitutional concern for protracted detention, the decision admittedly applies only to arrest without a warrant" (*Armstrong v. Squadrino* 152 F3d 564, 572 (7th Cir.)).

The right to counsel is a fundamental constitutional right. *Johnson v. Zerbst* 304 US 458, 467. A defendant's right to counsel begins at the initial appearance stage. See Fed. R. Crim. P. 44(a). The rule "requires the assignment of counsel as promptly as possible after it appears that the defendant is unable to obtain counsel." Fed. R. Crim. P. 44 Advisory Committee's Note (1966). The magistrate must allow the accused reasonable time to consult with an attorney. See Fed. R. Crim. P. 5(d)(2).

The state eludes that the Public Defender had no obligation to visit and/or consult with petitioner off-site due to medical miss-out from initial appearance/arraignment on 10/19/20 and before formal appointment on 11/30/20 once petitioner physically appeared in court. A first appearance takes place after the complaint has been filed and reviewed so that the arrestee is then a formal defendant in a criminal prosecution. *Coleman v. Frantz*, *supra*, 754 F2d 268, 279 (7th Cir.). The principal purpose of the requirement of prompt arraignment are to prevent secret police interrogation, to place the issue of probable cause for the arrest before a

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judicial officer, to provide the defendant with full advice as to his rights and an opportunity to have counsel appointed, and to enable him to apply for bail or for habeas corpus when necessary. *Youngblood v. Oster* 200 CA3d 1302, 1311 (2d App.); see Fed. R. Crim. P. 5(d). An extended pretrial detention without an initial appearance substantially impinges upon and threatens all of those specific rights. *Hayes v. Faulkner County*, *supra*, 388 F3d 669, 673 (8th Cir.).

B.

IMPORTANCE OF THE QUESTION PRESENTED

1. Constitutional Right to Counsel

This case presents a fundamental question of the interpretation of this Court's decision(s) in *Gideon v. Wainwright* 372 US 335, 342; and *Hamilton v. Alabama* 368 US 52, 53-54.

The question presented is of great public importance because it affects the administration of justice in all 50 states. In view of the large amount of litigation with regard to the affirmative obligation to formally appoint counsel when the right attaches guidance on the question is also of great importance to arrestees, because it affects their ability to receive fair decisions in criminal pretrial proceedings that may result from unlawful pre-arraignment detention.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted this Court's holding in *County of Riverside v. McLaughlin* 500 US 44, 56. This Court held in *McLaughlin* that a "prompt" hearing is 48 hours. Penal Code, section 825 codifies *McLaughlin*'s time determination. See *Youngblood v. Gates*, *supra*, 200 CA3d 1302 (2d App.).

The common sense understanding of the right to counsel is that once the right attaches, counsel shall be appointed. The accused would then be provided a reasonable amount of time to consult with counsel prior to the actual "critical stage." Presumably this process

would occur within 48 hours after arrest, excluding Sundays, holidays, etc., and nothing in Gideon or Hamilton suggests otherwise.

The lower court's reasoning that the formal appointment of counsel can be denied for 36 days due to medical miss-out from physical appearance at court after the right to counsel attacked and magistrate's calling of the case for hearing on 10/19/20, 10/20/20, 10/21/20, and 11/2/20, via felony complaint on file in the superior court is unconvincing. The state court relies on a couple of cases that does not contain that holding. See *In re Walker* 10 C3d 764, 778; *Ng v Superior Court* 4 C4th 29, 36-38. Furthermore, the holding in *In re Walker*, *supra*, is not based on Penal Code § 977(c)(1) [see cf. Fed. R. Crim. P. 5 (f)] which provides for court appearances via video teleconferencing. *Simmons v Superior Court* 203 CA3d 71, 74 (1st App.). This court has held that defendant's request for counsel at the initial appearance/arraignment invokes the Sixth Amendment. *McNeil v Wisconsin* 501 US 171, 175; but see *Brewer v Williams* 430 US 387, 404 ("[T]he right to counsel does not depend upon a request by the defendant"); *Carnley v Cochran* 369 US 506, 513 ("[W]here the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request").

2. Statutory Right to Counsel for Bail Hearing

Petitioner also has a statutory right to counsel pursuant to Penal Code § 1270.1(b) for bail/OR release hearing, which is a part of due process of law to which a petitioner is entitled. *Hicks v. Oklahoma* 447 US 343, 345; *McNeil v. Wisconsin*, *supra*, 501 US 171;

Petitioner has a statutory right to a bail. Penal Code § 1271. Thus, petitioner has a Constitutionally protected liberty interest²⁴ in bail. *Hicks v. Oklahoma*, *supra*, 447 US 343, 345. The due process clause also incorporates the Eighth Amendment. *Robinson v. California* 370 US 660, 666-667. The Eighth Amendment guarantees that any bail imposed not be excessive. *Stack v. Boyle* 342 US 1, 5.

Petitioner was not appointed counsel 48 hours after his arrest, excluding Sundays, holidays, etc., on 10/15/20 pursuant to Penal Code §§ 825, 1270.1(b) to secure a hearing (i.e., video teleconferencing initial appearance/arraignment [Pen. Code § 977(c)(1)] for bail reduction and OR release. *In re RANER* 59 C2d 635, 641; see *Schub v. Kuebel* 404 US 357, 369 ("It should be obvious that the poor man's real hope and avenue for

1. Penal Code, section 1319(b) provides for hearing prior to OR release. *VAN ATTA v. Scott* 27 C3d 424. Here, petitioner has a Constitutionally protected liberty interest in pretrial OR release. *Hicks v. Oklahoma*, *supra*, 447 US 343, 345.

relief is the personal recognizance provision"); *Stack v Boyle*, *supra*, 342 US 1, 4; *Lopez-Valenzuela v Arpaio* 770 F3d 772, 777 (9th Cir.). The denial of a bail reduction/OR release hearing results in pretrial detention. See *In re Humphrey* 11 C5th 135; *In re Brown* 76 CASH 296 (2d App); *People v The North River Ins. Co.*, 48 CASH 226 (2d App).

Currently there is no policy, procedure or practice for appointing counsel where a defendant is hospitalized, thus, not appearing in court² or has no access to a telephone and/or the phone number of the Public Defender. The Superior Court indicated "[t]he Court is unaware of any provision of law that requires the appointment of counsel prior to arraignment." Petitioner's research

2. A Sheriff's duty to release an inmate when he could not be promptly presented to the court. *Bickel v Sheriff of Whitley County* 2010 US Dist. LEXIS 29161 (NO Ind.). Penal Code § 825 requires petitioner's custodian to ensure that he is taken before a court to be appointed counsel, granted bail or OR release. The jailor acts at its own peril if it passes responsibility off on another party--whether the courts or the prosecutor. The Sheriff or the Chief of Police cannot delegate this responsibility to others. The Sheriff of the County of Los Angeles, the Chief of Long Beach Police Department or City Manager decision to maintain a policy of inaction that did not detect missed arraignments or provide for video teleconferencing

reveals that there are two ways in which an indigent charged with crime may obtain the services of the public defender: one, by applying directly to the public defender himself, the other by appearing unrepresented at arraignment and receiving a court-ordered appointment of counsel. *Ingram v Justice Court* 69 C2d 832, 838; see *In re Newborn* 53 C2d 786, 790; *US v Morris* 470 F3d 596, 601-602 (6th Cir.). Consequently, the procedure stated does not apply specifically to petitioner's situation. See *McNeil v Wisconsin*, *supra*, 501 US 171.

2.(cont...) with Magistrate or prospective appointed counsel was either deliberate indifference to the rights to the appointment of counsel within a reasonable time or tantamount to an intent to confine petitioner who had a right to be released. *Ortatt v Pearce*, *supra*, 954 F2d 1470 (9th Cir.); see *Berry v Baca* 379 F3d 764 (9th Cir.); *Fairley v Luman* 231 F3d 913, 918 (9th Cir.); *Hayes v Faulkner County*, *supra*, 285 F.Supp.2d 1132, 1142 (C.D. Ark), *aff'd*, 388 F3d 669 (8th Cir.); *County of Riverside v McLaughlin*, *supra*, 500 US 44; *Sullivan v City of Los Angeles* 12 C3d 710; *Youngblood v Gates*, *supra*, 200 CA3d 1302 (2d App.).

appointment of counsel pursuant to the due process clause.

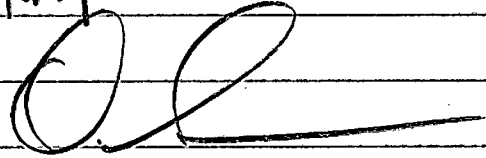
The fifth and fourteenth Amendments prohibit the government from depriving an inmate of life, liberty, or property without due process of law. US Const., Amends., V, XIV. The Due Process Clauses are designed to protect the individual against arbitrary government action. See *Wolf v. McDonnell* 418 US 539, 558. Appointment of counsel may sometimes be mandatory even in those areas in which the US Const., Amend., VI does not apply. This is true when the circumstances of a defendant or the difficulties involved in presenting a particular matter are such that a fair and meaningful hearing cannot be had without the aid of counsel. Compliance with the due process clause of the US Const. Amend., V then requires that counsel be appointed. *Dillon v. US*, *supra*, 307 F2d 445, 446-447 (9th Cir.).

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: Jumada Al-Awwal 4, 1444

[11/28/22]



Petitioner