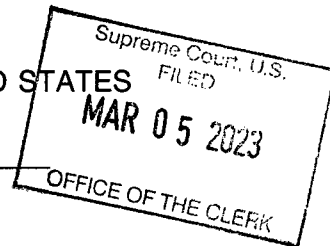


No. 23-5200

IN THE
SUPREME COURT OF THE UNITED STATES



AUGUSTINE RINCON MEDINA — PETITIONER
(Your Name)

vs.

People of the State of California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Second District Court of Appeal,, Division #6

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

PETITION FOR WRIT OF CERTIORARI

AUGUSTINE RINCON MEDINA (BM-8287)

(Your Name)

CSP-LAC P.O. BOX 4430 FAB5 - #125

(Address)

LANCASTER, CA. 93539

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Should the Rule announced in *People v. Birks* (1998) 19 Cal.4th 108, which permits a Prosecutor to veto a Defendant's request for an instruction on a Lesser-Related Offense, extends to situations where every element of the requested Lesser Offense was pled in the Information and the requested Instruction pinpoints the Defendant's theory of the case.

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:

RELATED CASES

Medina v. State of California, No. 2011041363 Superior Court of California
County of Los Angeles, Date of Conviction 11/06/2020

Medina v. State of California, No. B309771 Court of Appeal, 2nd Appellate
District, Division Six, Conviction Affirmed 10/10/2022

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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☐ is unpublished.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☐ is unpublished.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 _____; 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 _____.

☐ 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 12/14/2022.
A copy of that decision appears at Appendix B.

☐ 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

STATEMENT OF THE CASE

For purposes of this Petition, Medina adopts the California Court of Appeals statement of facts and procedural history. (Appendix A pages 2 through 5)

REASONS FOR GRANTING THE PETITION

Permitting the Prosecutor to veto an Instruction that the Defendant has requested on a lesser-related offense that was pled in the Information and that the requested Instruction pinpoints the Defendant's theory of the case, may undermine the reasonable doubt standard, and compromise the reliability of the factfinding process. This along with an accumulation of other errors, denied Petitioner his Right to Due Process and a Fair Trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Augustine Medina
AUGUSTINE RINCON MEDINA

Date: _____