

1 FRANK NATHAN ESCALANTE (Cdc#AX5865)

2 Pelican Bay State Prison

3 P.O. Box 7500

4 Crescent City, CA 95532

5
6 Petitioner in PRO PER

7 FRANK NATHAN ESCALANTE

8
9 IN THE SUPREME COURT
10 OF THE UNITED STATES
11

12 FRANK NATHAN ESCALANTE

13 Petitioner,

Case No.

23-5768

14
15 JIM ROBERTSON, Warden,
16 Respondent

PETITION FOR EN BANC
HEARING

17
18 Pursuant to United States Supreme Court Rule 44.1, and 44.2,
19 Petitioner hereby requests the U.S. Supreme Court take notice of
20 the issues Petitioner has raised through en banc hearing. The
21 issues raise precedence due to similarity issues, but may
22 cause great weight between innocence and guilt, when
23 separated. Therefore, en banc is appropriate.

24 Petitioner respectfully submits this petition for an en banc
25 hearing within 25 days of initial denial dated - November 6, 2023.

26 Dated : November 21, 2023

Respectfully Submitted,

27
28 FRANK NATHAN ESCALANTE, PRO PER

DEC - 8 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

FRANK NATHAN ESCALANTE (CDC# AX5865)

Pelican Bay State Prison

P.O. BOX 7500

Crescent City, CA 95532

Petitioner in PRO PER
FRANK NATHAN ESCALANTE

IN THE SUPREME COURT
OF THE UNITED STATES

FRANK NATHAN ESCALANTE } Case No.
Petitioner, } 23-5768

v.
JIM ROBERTSON, Warden, } PETITION FOR EN BANC
Respondent } HEARING

INTRODUCTION

Petitioner respectfully submits this petition for an en banc hearing since writ of Certiorari was denied November 6, 2023 and made timely inquiry into A en banc hearing but failed to comply with Rule 44 of Rules of this Court. Petitioner was moved from A-yard within the prison and need material to continue to work on his legal work, and because of Holidays outgoing mail won't be postmarked until after Christmas day. The petition to be submitted within 15 days is complicated because of the mailing system within the

State prison institutions in California as well specifically Pelican Bay State Prison. The Court may see the attached envelope that gave notice to Petitioner to correct petition that was postmarked 12/08/2023, then got to Pelican Bay State prison mailroom until 12/14/2023, then gets to Petitioner On 12/18/2023, as it was signed by Petitioner late that night. Given Petitioner's recent move to B-Yard, the slow mail system at the prison, and Holiday week because of Christmas, Petitioner asks within Good Faith that the Court accept this Petition as Petitioner is telling the truth.

GROUND

I.

The ground Petitioner in which should have been given applied jury instruction CALJIC 6.24 since Petitioner was charged with Conspiracy to Commit murder and there was factual elements of statements used as to apply the determination for A conspiracy based off co-defendant's statements. Therefore, the contrary rule the trial Court was aware of all the elements of the crime to establish jury instructions for conspiracy to commit murder, the principle issue is not one of instruction of declaration against penal interest in this case, but of whether the trial Court properly should of had sua sponte instructed the jury that, in the jury's determination whether the accusation of A conspiracy made without foundation (elements) of A conspiracy. Without A confidential informant to establish an agreement

1 of the plot of conspiracy to commit murder, CALJIC 6.24
2 would be appropriate.

3 Therefore, there are no other cases in which
4 similar instances that affect the constitutional rights like
5 that of Petitioner. The implication of Petitioner raising
6 *Menderson v. Kibbe*, analyzes the importance of
7 omitting A jury instruction. Thus, the reasonably probable
8 that the error affected the outcome of the case. Also,
9 evidence is bootstrapped.

10 CONCLUSION

11 En banc hearing is required and
12 be granted since intervening circumstances require it.
13 The Petition for rehearing is presented in good faith
14 and not for delay. Attached is original copy of
15 the denial of when Writ of Certiorari denied dated
16 November 6, 2023.
17

18 Dated: December 22, 2023

19 
20 FRANK NATHAN ESCALANTE
21 Petitioner in PRO-PER
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PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. Proc. 5; 28 U.S.C. § 1746)

I, Frank Nathan Escalante (CdC# AX5865) declare: I am over eighteen (18) years of age and am a party to this action. I am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. My State Prison address is: Pelican Bay State Prison, P.O. Box 7500, Housing Unit A6 Cell Number 129, Crescent City, CA, 95532-7500.

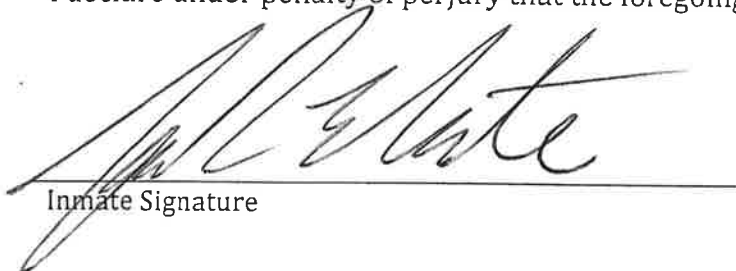
On the 21st day of November 2023, I served the following document(s):
PETITION FOR EN BANC HEARING

On the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a receptacle so provided at Pelican Bay State Prison, Crescent City, CA, 95532, and addressed as follows:

United States Supreme Court
Clerks office
1 1st Street NE
Washington, DC 20543-0001

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.


Inmate Signature

November 21, 2023
Date

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. Proc. 5; 28 U.S.C. § 1746)

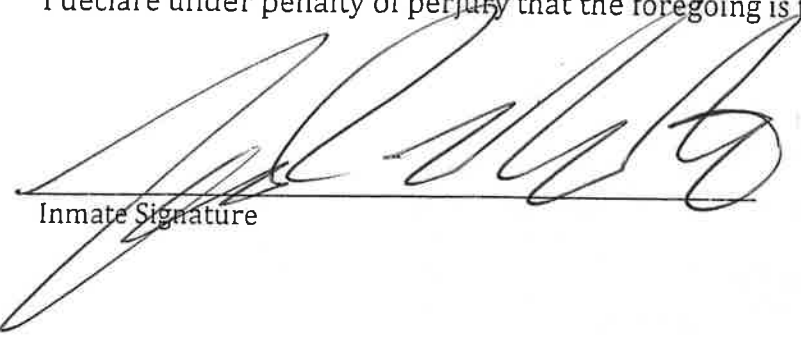
I, Frank Escalante # AXS865, declare: I am over eighteen (18) years of age and am a party to this action. I am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. My State Prison address is: Pelican Bay State Prison, P.O. Box 7500, Housing Unit B5 Cell Number 112, Crescent City, CA, 95532-7500.

On the 22 day of December 2023, I served the following document(s):
petition for en banc dated 21 November & envelope;
Corrected petition for en banc dated december 22, 2023
letter to Clerk

On the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a receptacle so provided at Pelican Bay State Prison, Crescent City, CA, 95532, and addressed as follows:

United States Supreme Court
Clerks office
1 1st Street NE
Washington, DC 20543-0001

I declare under penalty of perjury that the foregoing is true and correct.


Inmate Signature

December 22, 2023
Date

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 6, 2023

Mr. Frank Nathan Escalante
Prisoner ID CDC #AX5865
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532

Re: Frank Nathan Escalante
v. Jim Robertson, Warden
No. 23-5768

Dear Mr. Escalante:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris". The signature is fluid and cursive, with the first name "Scott" and last name "Harris" clearly legible.

Scott S. Harris, Clerk