

No. 23-793

SUPREME COURT OF THE UNITED STATES

Isidro Javier Armenta

Petitioner

v.

State of California

Respondent

On Petition For Writ Of Certiorari To The
Appellate Division of the Superior Court,
State of California, County of Los Angeles
Case No. 23APIN00010

PETITION FOR WRIT OF CERTIORARI

Isidro J. Armenta

Pro Se

617 East 104th Street

Los Angeles, CA 90002

(213) 245-1423

Questions Presented

1. Whether the Sixth Amendment Confrontation Clause holding in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) extends to automated traffic enforcement system schemes. Conversely, whether as applied, do automated traffic enforcement system moving violation allegations supersede and suspend the Sixth Amendment's Confrontation Clause.
2. Whether an automated traffic enforcement system scheme requiring direct approval by at least one sworn peace officer, and where a trial court becomes aware that the requirement is not met, and suppresses this material fact to convict the defendant, violates a defendant's right to procedural due process under the Fifth and Fourteenth Amendments.
3. Whether the statute at issue, has sufficient confusion, and unknown punishable conduct so as to violate defendant's right to due process and renders this statute void for vagueness.
4. Whether the statutes as enforced by and in conjunction with automated traffic enforcement systems violate the defendant's right to due process and should be void due to arbitrary prosecution.
5. Whether the defendant has been intentionally treated differently from others similarly situated (those accused of moving violations by a natural person peace officer versus his case with no peace officer at all) and that there is no rational basis for the disparate treatment, so as to violate the defendant's Equal Protection under the Fourteenth Amendment.

6. Whether government agents not authorized to issue vehicle moving violations, reserved for sworn peace officers, can suddenly do so with the simple introduction of an automated traffic enforcement system scheme, and can access private and confidential information, impersonate a peace officer by signing a citation under penalty of perjury, impersonate an attorney to prosecute a case in a court of law, and cause harm through a conviction that included but is not limited to an assessed fine, mark on the driving record, potential increases in future insurance rates and directly impacted liberty interests, is demonstrative of a violation of defendant's right against unlawful searches and seizures under the Fourth Amendment.

Parties to the Proceeding

Petitioner Isidro Javier Armenta was a defendant in the trial court conviction, and Defendant and Appellant in the last court to hear the merits of this matter.

Respondent State of California was plaintiff as The People of the State of California in the trial court conviction and Plaintiff and Respondent in the last court to hear the merits of this matter.

Corporate Disclosure Statement

Petitioner is a natural person non-corporate entity.

Related Cases

Isidro Javier Armenta v. Appellate Division, Superior Court Los Angeles County, No. B332178, Court of Appeal of the State of California. Denied transfer on October 25, 2023.

The People of the State of California v. Isidro Javier Armenta, No.23APIN00010, Appellate Division of the Superior Court. Affirmed on August 28, 2023. Denied rehearsing and transfer, September 9, 2023.

The People of the State of California v. Isidro Javier Armenta, No.006249EA, Superior Court of California. Judgment entered on January 17, 2023.

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Petition for Writ of Certiorari

Petitioner Isidro Javier Armenta respectfully petitions this court for a writ of certiorari to review the judgment of the Appellate Division of the Superior Court of the State of California.

Opinions Below

The opinion with the most significance is by the Appellate division. The decision is not published and is at Appendix A at page App. 1. The final opportunity to be heard for this matter was at the Court of Appeal, memorandum is not published, and the is at Appendix B at page App. 11.

Jurisdiction

Petition for transfer to the California Court of Appeal was denied on October 25, 2023.

Review was sought with the California Supreme Court but filing denied due to California Rules of Court, rule 8.500(a) that does not permit review for transfer denial. Petition is within the Court's jurisdiction under 28 U.S.C. § 1257.

It is timely filed within ninety days of the last action of the state's highest court and raises critical constitutional questions of import.

Constitutional Provisions Involved

United States Constitution, Amendment IV:

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 no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V:

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 offense to be put twice 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.

United States Constitution, Amendment VI:

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 defense.

United States Constitution, Amendment XIV, Section 1:

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.

Statement of the Case

On June 21 2022, petitioner was operating his vehicle on a public right of way and proceeded to make an allowable U-turn at an at-grade light rail intersection after seeing an affirmative indicator, a green arrow turning light, which then turned to a yellow turning arrow light. Appellant was issued a notice to appear (Form TR-115, part of a series of various citation affidavits issued by sworn peace officers), dated 07/05/2022 based upon an automated traffic enforcement system (ATES) for an alleged left-turn violation on a left red arrow light in violation of "Code and Section 21453 (c) VC", "Description Fail to Stop at Red Signal" on 06/21/2022.

At trial, petitioner articulated specific objections regarding the absence of the citation declarant and their absence violating petitioner's right to confrontation, as well as, the state's witness and their authority to present to the trial court, and the legality of the ATES, before the trial court brought the hearing to a close.

At conclusion, the court entered a guilty judgment against petitioner for the violation, was assessed a financial penalty and a point on petitioner's California Department of Motor Vehicle (DMV) record, with a traffic school option.

On appeal, the Appellate Division affirmed with opinion, and petitioner's submission of Petition to the Appellate Division for Rehearing and Transfer was denied. On appeal, the California Court of Appeal denied petitioner's Petition for Transfer. Seeking clarity and consistency as to the laws of the state, petitioner submitted an appeal to the California

Supreme Court, which submission was unfilled in deference to the Court of Appeal's prior denial of transfer.

In having exhausted appeals with the highest state court possible, this writ is respectfully before you now because of a belief of necessary review of the constitutional questions presented that are of great national concern.

Reasons for Granting the Writ of Certiorari

Introduction

California's automated traffic enforcement system as applied does not, as Petitioner understands it, bestow any additional authority beyond that which is used and authorized in the procedure where a natural person sworn peace officer issues the same or similar citation.

The State of California has statutory requirements that infer legislative preference for a citation process that errs toward the process where an ATES is not present.

This writ would be moot if the ATES process were followed. But it is not.

Not addressing this matter with this case will leave Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) unclear for prosecutions involving ATES's

In *Melendez-Diaz v. Massachusetts* the U.S. Supreme Court scrutinized the requisite bar necessary to confront the movant of an accusatory certification, or affidavit, or creator of evidence whose weight toward the conviction and prosecution

are significant. ATEs associated statutes require direct engagement by at least one sworn peace officer in the issuance of the citation allegation. California Vehicle Code § 21455.5 (c)(2)(F) (“Maintaining controls necessary to ensure that only those citations that have been reviewed and approved by law enforcement are delivered to violators.”); California Vehicle Code § 21455.5 (d)(“[A]ctivities listed in paragraph (1) of, and subparagraphs (A), (D), (E), and (F) of paragraph (2) of, subdivision (c) shall not be contracted out to the manufacturer or supplier of the automated traffic enforcement system.”)

Petitioner’s hearing moved forward despite raising the issue of confrontation of the individual that signed the moving violation citation. Further, an unknown state’s witness was allowed to present and claimed to have unlimited infinite testimony portability power in authenticating and using any and all citations issued by an ATEs to prosecute a case.

The State of California as applied through the ATEs in this case appears not to be consistent with *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) and this case would reconcile the differences.

This case would also clarify a defendant’s right to procedural due process as it relates to the use of an ATEs in prosecutions like in Brady v. Maryland, 373 U.S. 83

The trial court allowed what can only be characterized as the most flattering and favorable testimony of the ATEs. Petitioner believes that constitutional protections permit

sufficient examination even if not in the best of light. For example, while they mentioned that this specific ATES was in response to dangerous intersections, they did not mention that the placements of ATES on light rail line intersections are not indicative of a high collision intersection (the intersection at issue here and in both directions paralleling the light rail tracks form a dotted line correlated more to the Home Owners' Loan Corporation redlining maps). Further, in providing pictures and video in favor of prosecution, it is the petitioner's belief that pictures and videos showing rear-end crashes caused by ATES could be part of the deliberation. Another question that would be fair to ask: With an approach at 35 miles per hour (where 25 miles per hour or less is the lowest category in the chart for setting yellow light intervals at the minimum 3 seconds interval), why does this jurisdiction set a yellow arrow light interval to 3 seconds where other jurisdictions with almost identical configurations set their yellow arrow light intervals to 3.5 seconds or more? (Report to CTCDC on Minimum Yellow Light Change Interval Timing for Signalized Intersections <https://dot.ca.gov/-/media/dot-media/programs/safety-programs/documents/ctcdc/f0017772-item-18-08-report-on-minimum-yellow-light-change-interval-timing-for-intersections-a11y.pdf>; 2014 California Manual on Uniform Traffic Control Devices (CMUTCD) at pg. 891 ("A yellow change interval should have a minimum duration of 3 seconds and a maximum duration of 6 seconds. The longer intervals should be reserved for use on approaches with higher speeds."))

Furthermore, California has an anti-speed trap law in effect, defining it in part as a "speed trap' is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance,” and strong penalties, prohibitions, and rejection of a court’s jurisdiction, witness testimony competence, and introduction of evidence if the fruit lies with or in association with a “speed trap.” California Code, Vehicle Code § 40800-40805. An ATES appears to have all of the qualities of a speed trap. For example, the system measures two marks on the highway to establish a distance between alleged pre- and post-violation. In the photographic and video images produced, there is a notation of the alleged calculated speed. Some might offer a rebuttal that the alleged moving violation would have to be speeding but there appears to be no factual basis in statute or prior court opinions and the “speed trap” penalizes the use of the mechanism by prohibiting it and derivatives in all allegations in the California Vehicle Code.

This case would clarify whether City of Chicago v. Morales, 527 U.S. 41 and Nebbia v. New York, 291 U.S. 502 apply to ATES

The statute in question which criminalizes violation of a traffic signal along with conditional exceptions also poses significant problems raised in *City of Chicago v. Morales*, 527 U.S. 41 and *Nebbia v. New York*, 291 U.S. 502. Petitioner maintains that his movement was subject to the conditional exception whereby forward movement was permitted by a green then a yellow arrow light, that the evidence permitted to be introduced showed as much and in no instance deliberate flouting of the law, and that, as applied, demonstrates itself to

be a moving violation of government preference where conviction is guaranteed regardless of the procedural errors and likelihood of capricious enforcement.

While petitioner concedes that this case is in no way to scale as *Ex parte Mitsuye Endo*, 323 U.S. 283 and *Korematsu v. United States*, 323 U.S. 214, these cases, while they have their distinctions, offer a framework analog to better understand petitioner's position. As applied, the ATES functions as an arbitrary government scheme that denies constitutional protections before being able to seek legitimate remedies (*Endo*), and in the words of the *Korematsu* dissent by Justice Owen J. Roberts, the "two conflicting orders, one which commanded him to stay and the other which commanded him to go, were nothing but a cleverly devised trap to accomplish the real purpose[.] [...] The answer, of course, is that, where he was subject to two conflicting laws, he was not bound, in order to escape violation of one or the other, to surrender his liberty for any period."

This case would clarify whether, as applied, the ATES scheme in the State of California is an unreasonable search and seizure under the Fourth Amendment

In the trial record, the unknown state's witness conceded that they, nor the unit that enforces the ATES (including the person that signed the ATES citation to appear), are not sworn peace officers with arrest powers, as are those that issue moving citations are required to be, and as required for ATES's operation statutorily.

In addition to the confrontation objection overruled by the trial court that would have protected Fourth Amendment interests, petitioner asserts that his objection to the state's witness testimony because of their inability to prove that they were sworn peace officers (this objection is demonstrative of a Fourth Amendment claim because moving violations inherently activate Fourth Amendment considerations) along with this concession to the court by the unknown witness was sufficient for at least pause, if not ending the hearing in favor of petitioner. Petitioner further contends that the trial court as a neutral has a duty to, when presented with exculpatory evidence in a proceeding that is legally fatal, to take that into consideration in their deliberation.

While petitioner respectfully disagrees, the appellate division's opinion, in summary as to this argument, stated that petitioner's protests did not meet the bar of an objection and the trial court has no duty to protect defendant's from malicious prosecution and thus his search and seizure claims were not considered on appeal.

A moving violation allegation by a natural person sworn peace officer restricts freedom of movement at the time of the citation and through the adjudication process, but if done so more lawfully than not harbors little if any controversy.

By contrast in this case, a non-sworn peace officer accessed confidential papers, like DMV photo identification license and registration, (this goes further than *Riley v. California*, 573 U.S. 373 because it was a non-sworn peace officer unauthorized government agent searching digital confidential

contents, no different than a random individual forcing petitioner to stop their vehicle, smashing into a vehicle, and pulling documents out from the vehicle's compartments without consent or a warrant), a non-sworn peace officer government agent unauthorized to issue moving violations used a surveillance device (*Kyllo v. United States*, 533 U.S. 27; *Arizona v. Gant*, 556 U.S. 332; *California v. Hodari D.*, 499 U.S. 621), and a non-sworn peace officer unauthorized to prosecute moving violations prosecuted petitioner (petitioner offers the following cases as a frame of reference but asserts that lack of a sworn peace officer as required by statute in ATES schemes is legally fatal; *Terry v. Ohio*, 392 U.S. 1; *Draper v. United States*, 358 U.S. 307 (1959); *Lange v. California*, 594 U.S. ____).

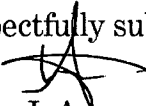
Search and seizure is a privileged act by sworn peace officers with delegated authority of a jurisdiction's police powers.

Petitioner asks the court to clarify whether the introduction of any technological medium, but specifically an ATES, somehow permits the government to search and seize all persons by any government agent not authorized nor trained to do so, in schemes that are not accidental or happenstance but perfected to extract revenue in the form of an alleged fine, effect a person's driving privilege through the placement of negative marks on driving records and potential increased costs in vehicle insurance rates, and the potential sharing of photographs and videos, the likenesses without consent, for perpetuity into databases unknown.

Conclusion

For the reasons above, petitioner Isidro Javier Armenta requests granting of this writ of certiorari.

Respectfully submitted,


Isidro J. Armenta

Pro Se

617 East 104th Street
Los Angeles, CA 90002
(213) 245-1423