

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Resendez (Pro-Se) – PETITIONER
(Your Name)

vs.

Court of Appeal - Second Dist. "etal" RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Superior Court of California, County of Los Angeles
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Resendez
(Your Name)

F.D. 142 P.O. Box 5008
(Address)

Calipatria Ca, 92233
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

- 1) I wanted to testify on 1 case, not both. Since my cases were joined as 1, I had to make a decision to testify to both or neither. Therefore, my 5th Amendment right was denied.
U.S. v. Sampson, 385 F.3d 183, 193 (2d Cir. 2004)

- 2) Only 1 of the 2 counts carried the gang allegation. Which means the gang evidence wasn't admissible for the other count. Please see headnote 1 in (People v. Albanan, 149 Cal. App. 4th 214).

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:

1) Superior Court of California, County of Los Angeles

2) Court of Appeal-Second Dist.

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Calderon v. Superior Court (2001) 87 Cal. App. 4th 933, 939

STATUTES AND RULES

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 _____ 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☐ is unpublished.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☐ is unpublished.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 D 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☒ is unpublished.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 of Appeal 2nd App. Dist. Div. 8 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 Oct 11/2017.
A copy of that decision appears at Appendix D.

☐ 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

(Prunty, *supra*, 62 Cal. 4th at p. 67, quoting §186.22, subd. (f).) Appears in Appendix A at p. 8.

Please note, the issues I'm raising were not raised on my direct appeal. The main issues I want this court to look at are, (U.S. v. Sampson 385 F.3d 183, 193 (2d Cir. 2004)) and, (People v. Albarran, 149 Cal. App. 4th 214).

I raised both these issues on my habeas petitions. I must also humbly ask this court not to penalize me for filing my habeas petitions in the wrong order.

STATEMENT OF THE CASE

I had 2 cases, 1 was assault w/ means likely to produce G.B.I., G.B.I., gang allegation and the other consisted of assault w/ deadly weapon, G.B.I. After they were joined, I put in a "Motion for Severance." My Severance was denied and I was denied a fair trial.

In the Severance motion I stated that I wanted to testify to 1 incident but not the other. I gave a brief description of what my testimony would consist of and, why I had a need to refrain from testifying to the other incident. This issue raises a "Federal Constitutional error," as to the 5th Amendment. - U.S. v. Sampson 385 F.3d 183, 193 (2d Cir. 2004) Also, only 1 of 2 counts carried the gang allegation which means the gang evidence wasn't admissible at the trial of the counts not consisting of the gang allegation. "Given its highly inflammatory impact the California Supreme Court has condemned the introduction of such evidence if it is only tangentially relevant to the charged offenses." - People v. Albanian, 149 Cal. App. 4th 214

REASONS FOR GRANTING THE PETITION

I, the defendant was denied a fair trial. A fair trial entitles the accused the opportunity to prepare their best defense. I wanted to testify to 1 case and not the other. The 5th Amendment of the Federal Constitution of the United States guarantees us the right against self incrimination.

My best defense for 1 case was to testify on my behalf. My best defense for the other was different. My 2 cases were ran together as 1 in front of the same jury. I had to make the difficult decision of testifying to both or neither. Therefore, I was denied a fair trial and my 5th Amendment right against self-incrimination.

It is important that the Supreme Court let the lower courts know, they may not undermine the Federal Constitution of the United States. Furthermore, the decision of the appellate court is in conflict with the appellate court's decision in: (U.S. v. Sampson 385 F.3d 183, 193 (2d Cir. 2004)). The above named case speaks of the same "Federal Constitutional error." I humbly ask the Supreme Court to remand my case to the Superior Court so that I may have a fair trial on each count separately.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Resendiz

Date: 12/06/2017