

25-6796

No. _____

ORIGINAL

FILED

NOV 04 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CARLOS MARTINEZ — PETITIONER
(Your Name)

vs.

CALIFORNIA-STATE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

CARLOS MARTINEZ #E16085
(Your Name)

P.O. Box 92
(Address)

Chowchilla, CA. 93610
(City, State, Zip Code)

(Phone Number)

RECEIVED

JAN 23 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether or not California must submit to a jury, and prove beyond a reasonable doubt, any determination whether or not the serious prior conviction qualifies as a strike prior conviction that exposes Petitioner to a minimum term or life in prison?
2. Whether California Penal Code Section 667, subdivisions (a)(1) and (e) should be construed as intended by the People of California to authorize, in the case of a burglary committed after a previous-single-serious prior conviction, not only the imposition of greater maximum punishment under subd. (a)(1), but also the imposition of an additional consecutive greater minimum or life term punishment?
3. Whether the Ex Post Facto permits California to change the character of the former judgment(s) to impose more punishment than that one already annexed under the old habitual criminal statute.

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

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-5
STATEMENT OF THE CASE	6-11
REASONS FOR GRANTING THE WRIT	14
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A	California Supreme Court's decision denying State Habeas Corpus on October 22, 2025	16-17
APPENDIX B	Court of Appeals' Opinion affirming direct Appeal	18-22
APPENDIX C	Abstract of Judgment From July 8, 1997	23-24
APPENDIX D	Official Pamphlet of Proposition 8 from June 8, 1982	25-32
APPENDIX E	Abstract of Judgment from March 16, 1992 and Finger-print card from prison	33-35
APPENDIX F		

TABLE OF AUTHORITIES CITED

CASES For other Cases see next page v	PAGE NUMBER
Apprendi v. New Jersey, 530 U.S. 466, 518 (2001)	8
Batchelder v. U.S., 284 U.S. 299, 304 (1979)	9
Bifulco v. U.S., 447 U.S. 381, 387 (1980)	10
Blockburger v. U.S., 284 U.S. 299, 304 (1932)	9
Busic v. U.S., 446 U.S. 398, 399-400 (1980)	10
Calder v. Bull, 3 U.S. 386, (1798)	12, 13
Commissioner v. Stern, 357 U.S. 39, 45 (1958)	10
Dixon v. Dupnik, 688 F.2d 682, 685 (9th Cir 1981)	12
Erie R.R. v. Topkins, 304 U.S. 64, 68 (1938)	10
Fairfield v. County of Gallatin, 100 U.S. 47, 52 (1879)	10
Graham v. West Virginia, 224 U.S. 616 (1912)	11, 12
In re Graham, 138 U.S. 461, 462 (1891)	13
STATUTES AND RULES	
California Penal Code Section(s)	
667(a)(1)	4, 7, 9, 13
667(d)(1)	4, 6, 7, 8
667(e)(2)(A)(i)	5, 6, 9, 11
969 f	7, 9
1170	5,
1192.7(c)	6, 13
1192.7(c)(18)	7,

OTHER

U.S. Constitution	3
5 Amendment	3
6 Amendment	3, 13
8 Amendment	3, 13
9 Amendment	4,
14 Amendment	4, 13
Section 10 cl. 2	

TABLE OF AUTHORITIES CITED, Continuation Page

Cases, Continuation

In re Harris, 49 Cal. 3rd 131, 136 (1989)	9-10, 11
Monge v. Cal., 524 U.S. 721, 737-741 (1998)	11
Moore v. Missouri, 159 U.S. 673 676-677 (1895)	12
Palko v. Connecticut, 302 U.S. 319, 323 (1937)	10
People v. Flint, 180 Cal. App. 3rd 13, 20 (1st Dist. 1986)	11
People v. Foley, 170 Cal. App. 3rd 1039, 1055 (3rd Dist. 1985)	8
People v. Ratner, 62 Cal. App. 2d Supp. 902, 904 (App. Rept. Sup. Ct. 1985)	8
People v. Shipe, 36 Cal. App. 4th 468, 478 (3rd Dist. 1995)	8
Simpson v. U.S. 435 U.S. 6, 11 (1978)	9, 10
Specht v. Patterson, 87 S.Ct. 1209, 1211-1212 (1967)	8

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 B 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 10/22/25.
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

United States Constitution

Section 10 cl. 1: "No state shall ... pass any Bill of Attainder, ex Post facto law, or impairing the obligation of Contracts,..."

5. Amendment: "No person shall be ... subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,..."

6. Amendment: "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, ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him;

8. Amendment: "... nor ... unusual punishment inflicted;"

9. Amendment: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage other retained by the people."

10. Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved ... to the people."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED, Continuation

United States Constitution, Continuation

14 Amendment: "... 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 any person within its jurisdiction the equal protection of the laws.

California Penal Code Sections

667(a)(1): "In compliance with subdivision (b) of section 1385, any person convicted of a serious felony who previously has been convicted in another jurisdiction which includes all of the elements of any serious felony shall receive in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately."

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a serious or violent felony shall be defined as:

(1) An offense defined in subdivision (c) of section 667.5 as a violent felony or an offense defined in subdivision (c) of section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b)-(i) inclusive, shall be made upon the date of that prior felony conviction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED, Cont.

California Penal Code Sections, Continuation

667(e)(2)(A): "If a defendant has two or more prior Felony convictions, as defined in paragraph (2) of subdivision (d), that have been plead and proved, the term for the current conviction shall be an indeterminate term of life imprisonment with minimum term of the indeterminate sentence calculated as the greater of:

- (i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions.
- (ii) Imprisonment in the state prison for 25 years;
- (iii) The term determined by the Court pursuant to Section 1170 for the underlying conviction including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046

STATEMENT OF THE CASE

On June 20, 1997, Petitioner was found guilty by a Jury of first degree residential burglary (burglary).

On July 8, 1997, the trial judge found that Petitioner had suffered a single serious prior conviction of two counts of burglary within the meaning of California Penal Code Section (P.C. §) 667(d)(1) and thereafter, he found that those two counts of burglary qualified as two strikes prior convictions within the meaning of P.C. § 667(d)(1). Finally, the trial Court impose on the current conviction for burglary a minimum term of 25 years to life under P.C. § 667(e)(2)(A)(ii) and five years maximum term under P.C. § 667(a)(1) (see Appx. C at p. 24). The only evidence to prove all these three prior convictions was: (a) the commitment documents as: (1) the abstract of judgment, (2) a prison fingerprint card, and (3) a photograph accompanying these commitment documents (see Appx E at pp. 34-35, showing the first two documents but not the photograph because it was never showed to Petitioner).

On October 5, 1998, Petitioner's direct appeal was affirmed, (Appx B at pp. 19-22) and the California Supreme Court denied review.

On October 27, 2025, the California Supreme Court denied to review the novel questions raised on this Petition for writ of Certiorary (Appx A at p. 17)

ARGUMENT

THE "DETERMINATION" REQUIRED TO BE MADE UNDER P.C. § 667(d)(1) MUST BE SUBMITTED TO THE JURY BECAUSE IS OTHER LEGAL OR FACTUAL FINDINGS THAN THE PRIOR CONVICTIONS THEMSELVES.

Petitioner construed P.C. § 667(d)(1) as follows: First, subdivision (d) and the first paragraph or sentence of paragraph (1) requires the trial Court to find whether the prior offenses in the prior convictions allegations are enumerated in P.C. § 667.5(c) or 1192.7(c); and second,

the second sentence of paragraph (1) [as underlined above] requires that once the trial court find, e.g. that the prior conviction is a serious prior conviction under P.C. §§ 667(a)(1), 969f and 1192.7(c)(18), then the determination of whether that serious prior conviction is a strike prior conviction for purpose of subdivision (e), shall be made up-on the date of that serious prior conviction. Without this determination the serious prior conviction is punishable with the maximum of five-years enhancement under the habitual criminal subdivision (a)(2) of P.C. § 667, but since that determination would subject a defendant to a minimum-greater punishment it must be submitted to the jury and proved beyond a reasonable doubt that in fact the serious offense is a strikeable offense dependent on its nature or character, in other words the jury must find one or more of the following:

1. the assesment of the seriousness of the prior conviction-offense(s) for purpose of subd.(e);
2. whether the prior conviction fits on of the strike prior conviction definition under subd.(d)(1) or (a)(1);
3. Whether the classification or categorization of the prior conviction is within subd.(a)(1) or (d)(1);
4. Whether the nature or character of the prior conviction would support the maximum or minimum term to life punishment under either subdivision (a)(1) or (e)(1)-(2);
5. Whether a two count prior conviction occurred on separate occasions. P.C. § 969f
6. whether the date of the prior conviction falls under svbd. (a)(1) or (d)(1).
7. Whether Petitioner served separate terms for his two-count prior conviction under either P.C. § 1170 or P.C. § 667(e)(1);

8. Whether the former trial court imposed separate sentences on different dates pursuant P.C. §§ 667(a)(1) or (e)(1)
9. Whether Petitioner was tried separately on each count prior conviction under subd. (a)(1)
10. Whether Petitioner was given two or one chance(s) before the current conviction. See generally, 1 Ninth Circuit Criminal Handbook §14.11 (2025) (All the case law cited therein applies to each point raised above); Cf. *People v. Ratner*, 62 Cal. App. 2d Supp. 902, 904 (App. Dept. Sup. Ct. 1944) ("On every principle of personal security and the administration of justice, the fact which gives rightfulness to the greater punishment should appear in the record". To leave to a judge to determine it outside of the record is to subject the defendant to an unconstitutional mode of trial) (cited in *Apprendi v. New Jersey*, 530 U.S. 466, 518 (2001)) id at p. 907. Cf. *People v. Foley*, 170 Cal. App. 3rd 1039, 1055 (3rd Dist. 1985) ("serious constitutional questions of due process of law are raised where a defendant is given a greatly enhanced sentence based upon facts found exclusively by the sentencing judge and not by jury") (citing *Specht v. Patterson*, 87 S.Ct 1209, 1211-12, (1967)).

In the other hand California has construed subd. (d)(1) as follows:
"The determination reference to the 'date of conviction' means that the Court is currently required to look backwards to the date of the conviction of the past offense and see if such past offense qualified as a misdemeanor, felony, or serious or violent felony, and that there is no reason, however, to require a trial court to determine whether the current or present offense-conviction may serve as a strike prior conviction for future sentencing proceeding" see *People v. Sipe* 36 Cal. App 4th 468, 478 (3rd Dist 1995) cert. den. 516 U.S. 1131 (1996)
Because subd. (d)(1) has been subject at least two interpretation this court should respond this question

PETITIONER SHOULD HAVE BEEN SENTENCED
ONLY UNDER THE MORE SPECIFIC SUBDIVISION
(a)(1) AND NOT ALSO UNDER THE GENERAL
SUBDIVISION (e)(2)(A)(ii)

Petitioner believes that this claim or question is governed by Blockburger v. U.S., 284 U.S. 299, 304 (1932) and Simpson v. U.S., 435 U.S. 6, 11 (1978) because subd. (a)(1) and (d)(1) creates two separate types of prior conviction with identical factual elements and both are the basis for punishment in a single proceeding. In this case there is no need to cite much case law because this is a novel question of whether California could create two habitual criminal Acts within the same P.C. § 667 and impose greater punishment under both Acts, if so, double jeopardy, due process and ex post facto questions would arise. In this case California easily able to prove that Petitioner violated both subdivisions with precisely the same factual elements based on the same evidence and thereafter the trial judge imposed the maximum of five-years under subd. (a)(1) and the minimum term of 25 years to life under subd. (e)(2)(A)(ii) on the current conviction in a single trial proceeding raising the prospect of double jeopardy, due process and ex post facto.

As to the double jeopardy it is clear that this question must be resolved by this Court.

As to the due process concerns Petitioner contends that he was convicted on 1992, for two counts of burglary acquiring a right under former construction of subd. (a), that his two count burglary conviction counted as a single serious prior conviction carrying only a five year enhancement under the habitual Criminal Act of 1982 if convicted in the future, see P.C. § 667 (a) (1992 edition) and P.C. § 969 f; see also In re Harris,

49 Cal.3rd 131, 134-137 (1989); cf. *Fairfield v. County of Ballatin*, 100 U.S. 47, 52 (1879) ("when the highest court of the state has given different constructions to its constitution, and laws, at different times, and rights have been acquired under the former construction, we followed that, and disregard the latter") see also *Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938) (holding that federal courts to apply decisional law in defining state created rights, obligations, and duties) with *Commissioner v. Stern*, 357 U.S. 39, 45 (1958)

In *re Harris* the California Supreme Court defined a serious prior conviction (single) as any conviction of two or more count tried in a single trial and held that the lower court erred in counting two robbery convictions imposing two five-years enhancements, *id.* 49 Cal.3d at 135-137. Therefore, Petitioner's sentence should had been enhanced under subdivision (a)(1) only because is that one defining his serious prior conviction, see *Busic v. U.S.*, 446 U.S. 398, 399-400 (1980); *Bifulco v. U.S.*, 447 U.S. 381, 387 (1980) (citing *U.S. v. Batchelder*, 442 U.S. 114, 121 (1979) & *Simpson v. U.S.*, 435 U.S. 6, 14-15 (1978))

In much or less words this Court should hold that Petitioner's single serious prior conviction could not constitute a part of the basis of an adjudication of habitual criminality under either subdivisions (d)(2) or (e) because when Petitioner committed his prior burglaries on 1991, the applicable subdivision (a)(1) did not so provided.

In the other hand Petitioner retains a fundamental right under the 8, 9, 10 and 14 Amendments to be sentenced under the law annexed to his 1992's serious prior conviction, otherwise anybody could say that it would be "repugnant to the conscience of mankind" for California to exercise its police powers to impose two punishments for a legal condition, *Palko v. Connecticut*, 302 U.S. 319, 323 (1937)

THE EX POST FACTO CLAUSE PROHIBITS
CALIFORNIA TO IMPAIR OR CHANGE THE
CHARACTER OF PETITIONER'S SINGLE
SERIOUS PRIOR CONVICTION OF TWO
COUNTS OF BURGLARY

This question was left open in 1912 in *Graham v. West Virginia*, 224 U.S. 616, (1912) when this Court noticed that Graham in "no way sought to contest the validity or unimpaired character of the former judgments" id at 625. Cf. Justice Scalia with whom Justice Souter and Justice Ginsburg join, dissenting in *Monge v. Cal.*, 524 U.S. 721, 737-741 (1998) (Justice Scalia insisted that the recidivism enhancement [P.C. § 667(e)] the Court confronts... in fact constitutes an element of Monge's offense) see id at 728-729 (Justice O'Connor's opinion)

In this case Petitioner's 1992 serious prior conviction of two counts of burglary qualifies because of its character or nature a single serious prior conviction, see *In re Harris*, supra, 49 Cal.3d at 135-137, and its character could not be altered or changed to declare now under subd.(d)(1) that it qualifies for two strikes prior convictions, nor California could split the two counts of burglaries prior conviction to impose two five-years enhancements, see, *People v. Flint*, 180 Cal.App.3d 13, 20 (1st Dist. 1986) ("The purpose of the language prior conviction on charges brought and tried separately is to disallow imposition of two statutory five-year enhancement for each of several crimes committed in one criminal escapade") Cf. P.C. § 667(a)(1) & *In re Harris*, supra, 49 Cal.3d at p.136-137;

However, California is barred by the ex post facto clause from changing the character of his serious prior conviction to a strikes prior convictions for purpose of subd.(e)(2)(A)(ii) because the en-

enhancement of the maximum of five years to 25 years to life sentence "seems to come within the same mischief as the creation of a crime of penalty." See *Calder v. Bull*, 3 U.S. 86, 397 (1798) (Justice Paterson's, concurring opinion) ("The enhancement of a ... penalty, seems to come within the same mischief as the creation of a crime of penalty; and therefore they may be classed together")

Petitioner argues not because "inflicting severer punishment upon old offender has long been recognized in this country ... and it has been held by this Court not to be repugnant to the Federal constitution, *Graham*, supra, 224 U.S. at 623 (citing *Moore v. Missouri*, 159 U.S. 673, 676-677 (1895) this Court would close the doors to him because it seems clear that Petitioner's single serious prior conviction is governed by the habitual criminal Act of 1982 and constitutes an act of California, *Dixon v. Dupnik*, 688 F.2d 682, 685 (9th Cir 1981) ("The conviction is not in itself a wrongful "act" that can serve as the basis for the imposition of punishment., a conviction represents an act of the State not an act of defendant. A conviction is something done to a defendant, not by him. Therefore, a defendant may not be punished simply for the undisputed fact of having been convicted") (Citations omitted) and applying a 1994 habitual criminal Act after the fact of Petitioner's 1992 serious prior conviction, by operation of subdivision (d), making that former fact of conviction, either a two strikes prior conviction or punishable under subdivision (e), becomes an ex post facto law not so much because it is applied after the fact but because: (1) it makes it greater the character of Petitioner's single serious prior conviction, (2) it changes the punishment from the maximum

of five years and inflicted a minimum term of 25 years to life, than the subd.(a)(1) annexed to the two burglaries, when committed, and (3) it change or alters the legal rules of evidence given the abstract of judgment a higher or different, testimony, than the law required [(a)(1)] at the time of the commission of the two burglaries, e.g. in this case the abstract of judgment back on 1992 serve to prove only a single serious prior conviction because both burglaries conviction was tried in a single trial but now California is allow by either the states courts or the law (subd.(d)(1)) to prove three prior convictions, that are, a serious prior conviction and two strikes prior convictions, all this in violation of the ex post facto clause, see Calder's 2, 3 and 4 categories, *Calder v. Bull*, supra, 3 U.S. at 390-391; see also id at p. 391 (But I do not consider any law ex post facto, ... but only those that create, or aggravate, ...; or encrease the punishment, or change the rules of evidence for the purpose of conviction")

Therefore, this case did not conformed strictly to the habitual criminal Act of 1982/1992 and the variation from its subd.(a)(1), either in the character or the extend of punishment inflicted in this case, renders the judgment absolutely void, see *In re Graham*, 138 U.S. 461, 462 (1891), see also id at p. 462 (habeas corpus is available when the nature of punishment for a prior conviction is changed)

In this case even though a higher punishment was imposed for suffering "two strikes prior conviction", these two strikes prior conviction are lesser type of necessarily included prior conviction within Petitioner's single serious prior conviction because the strikes priors convictions cannot be suffered without suffering serious prior convictions, see subd.(d)(1) (requiring that the trial court first find whether the prior offenses are enumerated in P.C. §§ 667.5 (c) or 1192.7 (c)) Therefore, the imposition of punishment for suffering new strikes prior conviction as lesser prior conviction violates the 8th, 9th, 10th and 14th Amendments

20

REASONS FOR GRANTING THE PETITION

This Court should grant review to decide these three novel questions of fact and law because:

1. California three strikes law (P.C. § 667(b) - (i)) is unique among the other States in requiring that a determination shall be made on the date of the prior conviction whether or not qualifies as strike prior conviction for purpose to impose the minimum term to life in addition to the punishment annexed already to that prior conviction before its enactment.
2. California has interpreted or construed subd. (d)(1) as taking a right acquired under former subd. (a)(1) to be sentenced to the maximum punishment for suffering a single serious prior conviction before its enactment.
3. California impermissible has impaired or changed the nature or character of Petitioner's single serious prior conviction from serious to strikes subjecting him to more than the maximum annexed under the old habitual criminal Act of 1982.
4. California has argued that she could impose punishment under subdivisions (a)(1) and (e)(1) - (2) because it insists that the punishment under (a)(1) is an enhancement statute and that subdivision (e)(1) - (2) is an habitual criminal statute as an alternative scheme, but Petitioner assures this Court that both subdivisions punish recidivists or repeat offenders constituting two separate habitual criminal Acts and to avoid taking any notice of documents proving that subdivision (a)(1) is an habitual criminal statute. Petitioner herein provides this Court with the official ballot pamphlet of Proposition 8 that was approved by the electorate enacting the habitual criminal statute through subd. (a) - e on June 8, 1982 (See Appx D at pp. 26-32)

Wherefore, Petitioner prays that this Court:

1. treat his petition with less stringent standard that if he was an attorney;
2. Appoint an attorney to amend and present in a better way this Petition; or
3. to grant this Petition and order California to release him immediately within five days from this Court order without any transitional or parole conditions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carlos Martinez

Date: November 3, 2025