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SUPREME COURT OF THE UNITED STATES

CARLOS MARTINEZ, Petitioner, VS. STATE OF CALIFORNIA Respondent,	Case No. 25-6796 PETITION FOR REHEARING OF ORDER DENYNG CERTIORARI AND CERTIFICATE OF COUNSEL

Petitioner respectfully request that this Court grant rehearing of its order dated March 30, 2026, which denied certiorari, and that the Court now grant certiorari.

The petition for certiorari previously filed herein presented three questions but the most important is: 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? Mullaney v. Wilbur, 95 S.Ct. 1881, 1889 (1975)

Now Petitioner would like to present a substantial question derived from the question stated above as: "California's indeterminate sentencing law, which authorize judge, not jury, to find facts exposing Petitioner to elevated greater term violated Petitioner's right to trial by jury."

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This question was raised before in Cunninghan v. California, 549 U.S. 270 (2007) in which under California's determinate sentencing (DSL) an offense is punishable by one of three precise terms of imprisonment: a lower term, a middle term or an upper term sentence. Under the DSL the trial judge was obliged to impose the middle term unless the judge found one or more additional "circumstances in aggravation or in mitigation to impose the lower or upper term. In summary this Court held in much or less words that: The DSL, by placing sentence-elevating factfinding within the judge's province, violates a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments. id. 279-293

The indeterminate sentencing law (ISL) involved in this case does the same thing but with the difference that imposes an additional term of life and for this reason this court should give more protection to petitioner, see Graham v. W. Virginia, 224 U.S. 616, 626 (1912) (In the latter proceeding, as well as in the former, the fundamental rights of the defendant with respect to the ascertainment of his liability to the increased penalty may be fully protected)

In this case the ISL is California Penal Code Section (P.C.§) 667(e)(2)(A) which punish a third serious felony conviction 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; and (iii) the term determinate by the court pursvant 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;

As written this ISL obliged the trial judge to impose 25 year to life upon petitioner without any finding in aggravation or mitigation under clause (ii), but the trial judge ignored deliberately the "determination clause" within subdivision (d) of P.C.§ 667. Subdivision (d) provides:

> (d) Notwithstanding any other law and for 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

The "determination clause" that is underlined requires that once the trial judge has find that the alleged prior conviction, e.g., is a serious prior conviction, then he or she must made a determination whether or not that serious prior conviction is a strike prior conviction for purposes of subdivision (b)-(i), so this determination qualifies as other fact than the serious prior conviction itself that must be submitted to the jury, not the judge.

Put it another way, Petitioner interpretes or construes the determination clause as follows:

> "The determination of whether a serious or violent prior conviction is a strike prior conviction for purposes of subdivision (b)-(i) inclusive shall be made upon the date of that serious or violent prior conviction"

Now another question comes to the picture, that is, why the determination should be made [based] on the date of that serious or violent prior conviction? At the same time this question raises an ex post facto concern because subdivision (h) of P.C.§667 provided on 1994 as follows: "(h) All references to existing statutes in subdivisions (b) to (i) inclusive are to statutes as they existed on June 8, 1993", so why make this reference to June 1993?

Petitioner believes and the language of subdivisions (d) and (h) supports, that subdivision (d) instructed the trial courts that the date in which the alleged serious or violent prior conviction was obtained would be determinative, e.g. if a trial court discover that an alleged serious prior conviction was obtained on July 8, 1993, then the trial court would be obliged to determine that such serious prior conviction is a strike prior conviction because it was obtained after June 1993, but if the date on that serious prior conviction pre-dates June 1993, then the trial court would be obliged to determine that such serious prior conviction is not a strike prior conviction; however the California Courts have not given force to these subdivisions but this court has the power to hear these ex post facto concerns because California has contrued this determinatron clause as follows:

> "The determination reference to the date of conviction means that the court is currently reqvired to looks 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 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)

This construction does not make sence simply because to determine whether an alleged prior conviction is serious or violent the trial could should look the record of conviction and discover under what Penal Code Section the alleged prior conviction was obtained, not the date. Then once the trial court, e.g discovers that the alleged prior conviction was obtained under P.C.§ 459, then the court would review the enumerated crimes in either P.C.§ 667.5(c) or 1192.7(c), see P.C§667(d)(1). In other words the date of an alleged prior conviction has nothing to do with whetherever is serious or violent, however, Petitioner's interpretation would make sense if we look backwards to see if the alleged prior conviction post or pre-dates the enactment of the ISL on 1994

For the reasons stated above this court should grant rehearing and grant review and hold that:

1. California must submit to a jury and prove beyond a reasonable doubt whether or not Petitioner's 1992's single serious prior conviction qualifies as a strike prior conviction to expose him to a minimum term to life sentence in prison because such determination under the "determination clause" constitutes other fact than the serious prior conviction itself; or/and

2. California's ISL, which authorize judge, not jury, to made a determination whether a serious prior conviction qualifies as a strike prior conviction exposing Petitioner to select the greatest term violated Petitioner's right to trial by jury, or;

3. California's ISL violates the ex post facto clause because it takes into consideration serious or violent prior convictions that predates its enactment

Date: April 1, 2026

Respectfully submitted. . .

Carlos Martinez