

No. 25-7562

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES CURTIS KERN — PETITIONER
(Your Name)

vs.

THE PEOPLE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

California Court of Appeal, Third Appellate District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Curtis Kern, BX3065
(Your Name)

California Health Care Facility; P.O. Box 213040
(Address)

Stockton, CA 95213
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

What standard applies when appellate courts review a trial court's dismissal of a juror during deliberations to determine whether the dismissal was based on the juror's views of the case and thus a violation of the defendant's Sixth Amendment right to an impartial jury?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

Petitioner James Curtis Kern

Respondent The People

RELATED CASES

- People v. James Curtis Kern, No. 22FE016826, Sacramento County Superior Court. Judgment entered March 8, 2024.
- People v. James Curtis Kern, No. C100646, California Court of Appeal, Third Appellate District. Opinion filed December 22, 2025.
- People v. James Curtis Kern, No. S295087, California Supreme Court. Petition for review denied March 11, 2026.

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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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 _____ 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 Mar. 11, 2026.
A copy of that decision appears at Appendix C.

☐ 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

SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION:

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.

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION:

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

For purposes of this petition, petitioner adopts the factual and procedural background that appears in the state appellate court's opinion on pages 2 through 5. The state appellate court's opinion appears at Appendix A.

The California Supreme Court denied petitioner's petition for review on March 11, 2026. The order appears at Appendix C.

REASONS FOR GRANTING THE PETITION

The Sixth Amendment guarantees the right to an impartial jury. U.S. Const. amend. VI. This guarantee “includes a requirement ‘that the verdict should be unanimous.’” *Ramos v. Louisiana*, 590 U.S. 83, 92 (2020). The Sixth Amendment right to a unanimous jury “is incorporated against the States under the Fourteenth Amendment.” *Id.*

In light of the unanimous-jury requirement, the D.C. circuit has held that “a court may not dismiss a juror during deliberations if the request for discharge stems from doubts the juror harbors about the sufficiency of the government’s evidence.” *United States v. Brown*, 823 F.2d 591, 596 (D.C. Cir. 1987). A juror may be excused when there is no “‘tangible’ or ‘appreciable possibility’” that the allegations of misconduct stem from the juror’s view of the evidence. *United States v. Wilkerson*, 966 F.3d 828, 838 (D.C. Cir. 2020). In contrast, the Third, Sixth, and Ninth Circuits have adopted a “reasonable possibility” standard. *See United States v. Kemp*, 500 F.3d 257, 304 (3d Cir. 2007; *United States v. Ozomaro*, 44 F.4th 538, 545-46 (6th Cir. 2022); *United States v. Symington*, 195 F.3d 1080, 1087-1088 (9th Cir. 1999). The Eleventh Circuit has articulated a “substantial possibility” standard. *United States v. Abbell*, 271 F.3d 1286, 1302-04 (11th Cir. 2001). The Fourth Circuit has declined to decide whether to apply the “reasonable possibility” standard or the “substantial possibility” standard, “assuming there is a difference between the two.” *United States v. Lafitte*, 121 F.4th 472, 489 (4th Cir. 2024).

In *People v. Thompson*, 49 Cal.4th 79, 137-38 (2010), the California Supreme Court "expressly rejected" the standards applied by the federal appellate courts in favor of its own "demonstrable reality" test. Petitioner's case illustrates how California's "demonstrable reality" test can lead to the violation of a defendant's right to a unanimous jury under the Sixth Amendment.

This Court should grant this petition to determine which standard applies and exactly what it means. Doing so will provide guidance to both state and federal courts and ensure that a single, manageable standard applies in all of them.

Finally, petitioner would like to mention to the Court that it is currently considering a petition for writ of certiorari on this same issue in *Olivarria v. California*, 25-6544. The Court requested a response to Mr. Olivarria's petition, and the State of California has filed one.

Petitioner asserts, within California Racial Justice Act 2542, Penal Code 745 (a); stats. 2025.c. 721

Petitioner asserts,

The Court did not have Subject Matter Jurisdiction,
Due To The facts Petitioner is innocent.

Petitioner asserts, see:

People V. Serrano (2012) 211 Cal. app. 4th 496.

Due To There being a hung Jury and a Juror would not vote guilty. My Juror was dismissed. Also
Jury Question No. 2, "Do we need a unanimous ^{Decision} for each count in order to Proceed?" We are experiencing disagreement on two counts of (five)". The Court responded in writing "Yes". Every Juror has the right to His or Her own opinion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James K. Gunn

Date: May 20, 2026