

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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**[petitioner's name]**  
Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA  
Respondent

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PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA  
COURT OF APPEAL, **[THIRD/FIFTH]** APPELLATE DISTRICT

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**[counsel of record's name]\***  
**[any other desired counsel names]**  
**[counsel of record's address]**  
**[counsel of record's email address]**  
**[counsel of record's telephone #]**

Counsel for the Petitioner  
[\* - Counsel of Record]

**QUESTIONS PRESENTED (Rule 14.1(a))**

**QUESTIONS PRESENTED**

Whether California's Determinate Sentencing Law, by permitting sentencing judges to impose enhanced sentences based on their determination of facts not found by the jury or admitted by the defendant, violates the Sixth and Fourteenth Amendments, pursuant to *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) and *Blakely v. Washington*, 542 U.S. 296 (2004).

The identical question is pending before this Court in *Cunningham v. California* (No. 05-6551), *cert. grd.*, \_\_\_ U.S. \_\_\_, 2006 U.S. LEXIS 1136 (Feb. 21, 2006).

**TABLE OF CONTENTS**

**OPINION BELOW.** . . . . . xxx

**JURISDICTION.** . . . . . xxx

**CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.** . . . . . xxx

**STATEMENT OF CASE.** . . . . . xxx

**REASONS FOR GRANTING THE PETITION.** . . . . . xxx

**I. This Case, In Which a *Blakely* Challenge To California’s Sentencing Scheme Was Presented and Rejected in the State Courts, Should Be Held For Disposition Pending This Court’s Decision In *Cunningham v. California*, No. 05-6551.** . . . . . xxx

**APPENDICES:**

**Appendix A - Opinion of California Court of Appeal.** . . . . . xxx

**Appendix B - Denial of Review by California Supreme Court.** . . . . . xxx

**Appendix C - Trial Court Sentencing Transcript.** . . . . . xxx

**Appendix D - Relevant State Statutory and Rule Provisions.** . . . . . xxx

## TABLE OF AUTHORITIES

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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**[name of petitioner]**, Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA, Respondent

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PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA  
COURT OF APPEAL, **[THIRD/FIFTH]** APPELLATE DISTRICT

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Petitioner, **[name of petitioner]**, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the California Court of Appeal, **[Third/Fifth]** Appellate District, filed on **[date of opinion]**.

In light of that request, petitioner asks this Court to consider holding this case for disposition pending its decision in *Cunningham v. California* (No. 05-6551), *cert. grd.*, \_\_\_ U.S. \_\_\_, 2006 U.S. LEXIS 1136 (Feb. 21, 2006), and then granting certiorari, vacating the judgment of the California Court of Appeal, and remanding the case for further proceedings in light of *Cunningham* (“GVR”).

**OPINION BELOW**

The opinion of the California Court of Appeal, which was **[unpublished/unpublished in pertinent part/published in pertinent part]**, was issued on **[date of opinion]**, and is attached as Appendix A. The California Supreme Court’s one-page order denying review

is attached as Appendix B. **[add citations if any opinion was published; optionally, add LEXIS or WESTLAW citations to unpublished opinions and denials of review]** The transcript of the trial court sentencing hearing is attached as Appendix C.

### **JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal for which petitioner seeks review was issued on **[date of opinion]**. The California Supreme Court order denying petitioner's timely petition for discretionary review was filed on **[date of denial of review]**. This petition is filed within 90 days of the California Supreme Court's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

*United States Constitution, Amendment 6:*

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 defence.

*United States Constitution, Amendment 14:*

No state . . . shall 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.

The California statutory provisions and court rules that are relevant to this petition, **[list them]**, are reprinted in Appendix D.

### **STATEMENT OF CASE**

Petitioner [pleaded guilty to/was convicted by jury of] [list convictions and statutes violated]. Clerk’s Transcript (“CT”) \_\_\_\_\_. Enhancements were charged and found true for [list enhancements charged and found true]. CT \_\_\_\_\_. At petitioner’s judgment and sentencing on [date of sentencing], the trial court found true [# of aggravating factors] aggravating factors: [list aggravating factors]. It found true [# of mitigating factors] mitigating factors: [list mitigating factors, if any]. [Describe trial court’s sentence, e.g.: “The trial court then sentenced petitioner to the upper term of \_\_\_\_ years in state prison.”] App. \_\_\_\_\_, at p. \_\_\_\_\_.

[optional: If defendant’s counsel specifically argued *Apprendi* or *Blakely* in the trial court, briefly set forth the nature of the argument, a summary of the trial court’s stated reasons for rejecting the argument, and the relevant page citations in App. C]

In the state Court of Appeal, petitioner argued that the judicial fact-finding at sentencing violated his federal constitutional right to [a jury trial, proof beyond a reasonable doubt, or both, as applicable], citing [list key constitutional provisions and U.S. Supreme Court cases cited in the appellate briefing, e.g.: “the Sixth and Fourteenth Amendments and this Court’s decisions in *Blakely v. Washington*, 542 U.S. 296 (2004)”. [cite AOB and/or ARB pages where argument was made] [optional: briefly elaborate on nature of argument, including quotations if desired, with citations]

The California Court of Appeal rejected petitioner’s argument on the merits and affirmed his sentence. App. A at \_\_\_\_\_. [briefly describe or quote basis of Court of Appeal’s opinion, with citation, e.g.: “The Court held that this result was mandated by the California Supreme Court’s opinion in *People v. Black*, 35 Cal.4th 1238, 113 P.3d 534, 29 Cal.Rptr.3d 740 (Cal. 2005). App. A at \_\_\_\_.”]

Petitioner sought discretionary review of the issue in the California Supreme Court, making the same federal constitutional argument and citing the same basic authorities set forth above. [cite Petition for Review pages where argument was made] The California Supreme Court summarily denied review without opinion. App. B.

## REASONS FOR GRANTING THE PETITION

### I

#### **This Case, In Which a *Blakely* Challenge To California’s Sentencing Scheme Was Presented and Rejected in the State Courts, Should Be Held For Disposition Pending This Court’s Decision In *Cunningham v. California*, No. 05-6551**

*[note: The argument that follows is for a very basic case with one upper term for a substantive conviction and no pertinent enhancements. To the extent that your case differs from this basic type of Cunningham case, you should vary the language accordingly.]*

In *Cunningham v. California*, this Court will be determining whether California’s Determinate Sentencing Law (“DSL”) violates the Sixth Amendment jury trial guarantee, and the Fourteenth Amendment guarantee of proof beyond a reasonable doubt.

As addressed more fully in the *Cunningham* certiorari petition, California law authorizes imposition of an “upper term” sentence (rather than the presumptive “middle term”) only if the judge finds aggravating circumstances over and above the elements of the offense of conviction. Cal. Pen. Code § 1170(b).

In this case, as in *Cunningham*, the sentencing judge based the upper term sentence on the judge’s own factual findings of “aggravating circumstances” for sentencing, specifically, [list them]. Because those additional factual findings were necessary for California law to authorize an upper term sentence of \_\_\_\_ years, rather than a mid-term sentence of \_\_\_\_ years, the judge’s adjudication of those facts without a jury trial and finding beyond a reasonable doubt deprived petitioner of his Sixth Amendment jury trial guarantee

and his Fourteenth Amendment guarantee of due process, just as in the pending *Cunningham* case and in *Blakely v. Washington*, 542 U.S. 296 (2004). This case presents the same question and should be held pending a decision in *Cunningham*.

The *Blakely* claim in this case was preserved in state court. Appellant argued that he was sentenced in violation of *Blakely*. The state court of appeal denied the claim on the merits, [optional, if appropriate: “ruling that it was bound by the state Supreme Court’s decision in *Black*,”] App. A at \_\_\_; the state supreme court summarily denied review. App. B.

This Court's disposition of *Cunningham* will be determinative of the legality of petitioner's sentence. Accordingly, this case should be held pending the decision in *Cunningham*.

### CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari. In light of that request, petitioner asks this Court to consider holding this case for disposition pending its decision in *Cunningham v. California* (No. 05-6551), *cert. grd.*, \_\_\_ U.S. \_\_\_, 2006 U.S. LEXIS 1136 (Feb. 21, 2006), and then granting certiorari, vacating the judgment of the California Court of Appeal, and remanding the case for further proceedings in light of *Cunningham* (“GVR”).

Dated: [date]

Respectfully submitted,

\_\_\_\_\_  
[counsel of record’s name]\*  
[any other desired counsel names]

Counsel for the Petitioner  
[\* - Counsel of Record]