

1 LAW OFFICES OF IAN WALLACH, P.C.  
2 IAN M. WALLACH (SBN 237849)  
3 iwallach@wallachlegal.com  
4 5777 W. Century Blvd., Ste. 750  
5 Los Angeles, CA 90045  
6 Telephone: (213) 375-0000  
7 Facsimile: (213) 402-5516

8 KAEDIAN LLP  
9 KATHERINE C. MCBROOM (SBN 223559)  
10 kmcbroom@kaedianllp.com  
11 8383 Wilshire Blvd., Ste. 210  
12 Beverly Hills, CA 90211  
13 Telephone: (310) 893-3372  
14 Facsimile: (310) 893-3191

15 GRAY & ASSOCIATES, P.C.  
16 NANCY E. GRAY (SBN 150214)  
17 ngray@grayfirm.com  
18 11500 W. Olympic Blvd., Suite 400  
19 Los Angeles, CA 90064  
20 Telephone: (310) 452-1211  
21 Facsimile: (888) 729-2402

22 Attorneys for Defendant  
23 PEDRO MARTINEZ

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
25 **FOR THE COUNTY OF SAN BERNARDINO**

26 THE PEOPLE OF THE STATE OF  
27 CALIFORNIA,

28 v.

Plaintiff,

PEDRO MARTINEZ,  
Defendant.

Case: FVI19000218

**DEFENDANT PEDRO MARTINEZ'S  
MOTION TO ALLOW JULIETA  
MARTINEZ TO REMAIN IN THE  
COURTROOM FOLLOWING HER  
TESTIMONY**

**FILED**  
**SUPERIOR COURT**  
**COUNTY OF SAN BERNARDINO**  
**JOSHUA TREE DISTRICT**

**NOV 13 2023**

**BY**   
**NADINE GOLDEN, DEPUTY**

1 If this motion is being filed, it means that the Deputy District Attorney of the County of  
2 San Bernardino is attempting to exclude an accused's wife from the courtroom after testifying  
3 based on the misguided theory that the wife may later be subject to recall by the People. This  
4 motion is without precedent in published case law in California.

5 To avoid stating the truth would be dishonest — the only reason for the People to claim  
6 that they may recall Mrs. Martinez after being subject to direct and cross examination is to  
7 keep her out of the jury's view and prevent her from supporting her husband who is wrongly  
8 accused. This position is reprehensible and should be flatly rejected.

9 The decision to exclude witnesses from the courtroom while other witnesses testify  
10 under Evid. Code § 777 is reviewable only as an abuse of discretion. *People v. Roybal* (1998)  
11 19 Cal.4th 481, 511. The purpose of this rule "is to prevent tailored testimony and aid in the  
12 detection of less than candid testimony." *People v. Valdez* (1986) 177 Cal.App.3d 680, 687;  
13 see also *People v. Lariscy* (1939) 14 Cal.2d 30, 32; *People v. Cooks* (1983) 141 Cal.App.3d  
14 224, 330.

15 Mr. Martinez has a due process right to a public trial. U.S. Const., 6th & 14th  
16 Amends.; Cal Const., Art. I, §§ 15, 29. An accused has a right protected by both the federal  
17 and state Constitutions to a trial that is open to the general public at all times. U.S. Const., 6th  
18 & 14th Amends.; Cal Const., Art. I, §§ 15, 29; *People v. Woodward* (1992) 4 Cal.4th 376,  
19 381-382 (federal and state rights coextensive); *People v. Bui* (2010) 183 Cal.App.4th 675, 680.  
20 The right to a public trial benefits the accused, allowing the public to see the trial is fair. The  
21 presence of spectators conveys to the jury a sense of the importance of its role in the trial. It  
22 also ensures that the judge and prosecutor carry out their duties in a responsible manner and  
23 discourages witnesses from offering perjured testimony. *Waller v. Georgia* (1984) 467 U.S.  
24 39, 46; *People v. Woodward, supra*, 4 Cal.4th at 385.

25 The public trial right includes the right of an accused to have supportive family and  
26 friends present during the proceedings. *In re Oliver* (1948) 333 U.S. 257, 271-272) ("And  
27 without exception all courts have held that an accused is at the very least entitled to have his  
28

1 friends, relatives and counsel present, no matter with what offense he may be charged  
2 (citations omitted).” Even those who deplore the sensationalism of criminal trials and advocate  
3 the exclusion of the general public from the courtroom would preserve the rights of the  
4 accused by requiring the admission of the press, friends of the accused, and selected members  
5 of the community. Radin, *The Right to a Public Trial*, 6 Temp. L. Q. 381, 394-395; 20 J. Am.  
6 Jud. Soc. 83.”).

7 In order to exclude a witness, the prosecutor must provide a “substantial reason” why  
8 the challenged witness need be excluded (merely stating that such a witness’s testimony  
9 may be necessary to corroborate or challenge further testimony is insufficient – and this is  
10 even more true when the witness has already testified). A trial court’s exclusion of some  
11 spectators will be upheld if, and only if, a substantial reason supports the exclusion. *U.S. v.*  
12 *Osborne* (1995) 68 F.3d 94, 98-99.

13 The prosecution has not offered and cannot offer any “substantial reason” warranting  
14 such a severe denial of this constitutional right. Absent such a representation, and absent a  
15 Court’s find that the reason is sufficiently “substantial” to deny Mr. Martinez of this  
16 constitutional right, such an order may not issue. Mrs. Martinez must be permitted to remain in  
17 the courtroom following her direct and cross-examination.

18 DATED: November 13, 2023

LAW OFFICES OF IAN WALLACH, P.C.

19  
20 By:

  
\_\_\_\_\_  
IAN M. WALLACH

Attorney for Defendant  
PEDRO MARTINEZ

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 5777 West Century Blvd., Suite 750, Los Angeles, CA 90045

On November 13, 2023 I served the following document(s) described as: **DEFENDANT PEDRO MARTINEZ'S MOTION TO STAY MATTER FOR 14 DAYS, OR, IN THE ALTERNATIVE, TO STRIKE THE OPINION TESTIMONY OF PROSECUTION WITNESS STEVE CVENGROS** in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

Deputy District Attorney Deena Pribble  
DPribble@sbcda.org

- BY MAIL:** I deposited such envelope in the mail at 8383 Wilshire Blvd. Suite 210, Beverly Hills, CA 90211. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to California Rules of Court. The telephone number of the sending facsimile machine was (310) 893-3191. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list.
- x **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 13, 2023 at Los Angeles, California.

  
\_\_\_\_\_  
IAN WALLACH