

BREYER, J., concurring

**SUPREME COURT OF THE UNITED STATES**

No. 98–7809

SALVADOR MARTINEZ, PETITIONER v. COURT OF  
APPEAL OF CALIFORNIA, FOURTH  
APPELLATE DISTRICT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
CALIFORNIA

[January 12, 2000]

JUSTICE BREYER, concurring.

I agree with the Court and join its opinion. Because JUSTICE SCALIA writes separately to underscore the continuing constitutional validity of *Faretta v. California*, 422 U. S. 806 (1975), I note that judges closer to the firing line have sometimes expressed dismay about the practical consequences of that holding. See *e.g.*, *United States v. Farhad*, 190 F. 3d 1097, 1107 (CA9 1999) (concurring opinion) (right of self-representation “frequently, though not always, conflicts squarely and inherently with the right to a fair trial”). I have found no empirical research, however, that might help determine whether, in general, the right to represent oneself furthers, or inhibits, the Constitution’s basic guarantee of fairness. And without some strong factual basis for believing that *Faretta*’s holding has proved counterproductive in practice, we are not in a position to reconsider the constitutional assumptions that underlie that case.