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Attorney for Petitioner Rico Ricardo Lopez

In the Supreme Court of the State of California

)	Supreme Court No. S258912
In re)	
)	Court of Appeal
Rico Ricardo Lopez,)	(First District,
)	Division One)
)	No. A152748
)	
On Habeas Corpus,)	Sonoma County
)	Superior Court
)	No. SCR-32760

Petitioner’s Request for Judicial Notice

To: The Honorable Tani Cantil-Sakauye, Chief Justice, and the Honorable Associate Justices of the Supreme Court of the State of California:

Pursuant to rule 8.252 of the California Rules of Court, and to Evidence Code sections 452 and 459, petitioner, through his counsel, requests this Court to take judicial notice of the records in petitioner’s prior direct appeal in *People v. Amante, et al.*, No. A113655.

This request for judicial notice is based on the following points and authorities.

DATED: May 20, 2020

Respectfully submitted,

/s/ Victor J. Morse

Victor J. Morse

Attorney for Petitioner
Rico Ricardo Lopez

Appointed by the Supreme Court

Memorandum of Points and Authorities

Rule 8.252 of the California Rules of Court provides the means for judicial notice in a reviewing court. The rule provides in subdivision (a)(2) that the motion must state:

- (A) Why the matter is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
- (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
- (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(Cal. Rules of Court, rule 8.252(a)(2).)

Petitioner asks this Court to take judicial notice of the records in petitioner's prior direct appeal in *People v. Amante, et al.*, No. A113655.

This Court may properly take judicial notice of the court records in a related appeal. This Court did so in *Stephenson v. Drever* (1997) 16 Cal.4th 1167, and explained the basis of its action:

Because this appeal is taken from a judgment of dismissal after the sustaining of a demurrer without leave to amend, we draw the operative facts, as did the Court of Appeal, from the complaint and from the record in an appeal [] in a related action between the same parties []. We may take judicial notice of the latter record. (Evid. Code, §§ 452, subd. (d)(1), 459.)

(*Stephenson, supra*, at p. 1170, fn. 1, citations omitted.)

This Court's review in this matter follows an appellate opinion filed on September 25, 2019 in *In re Lopez*, No. A152748, reversing the Superior Court's order granting a writ of habeas corpus and remanding with

instructions to reinstate the original judgment. The issue in *In re Lopez*, No. A152748 was whether instructional error pursuant to *People v. Chiu* (2014) 59 Cal.4th 155 requires reversal of petitioner's first degree murder conviction.

In the habeas corpus proceedings, the Superior Court judicially noticed the record in petitioner's previous appeal in *People v. Amante, et al.*, No. A113655. (See 2 RT 104; 1 CT 17, 49, 55; 3 CT 665 (record in No. A152748.)

Throughout its opinion in *In re Lopez*, No. A152748, the Court of Appeal discussed and relied on trial evidence found in the record of petitioner's prior direct appeal in *People v. Amante, et al.*, No. A113655. Both petitioner and the Attorney General cited to that record in their pleadings in the Court of Appeal. However, it does not appear that either party specifically requested judicial notice of that record in the Court of Appeal.

The matter to be noticed is relevant to this Court's review of the Court of Appeal's decision in *In re Lopez*, No. A152748. Petitioner must cite to the record in *People v. Amante, et al.*, No. A113655 in his briefs, and the Attorney General will need to do the same in its brief. This is so because the issue presented by this case relies on evidence and argument presented at petitioner's trial, which must be found in the record in petitioner's prior direct appeal in *People v. Amante, et al.*, No. A113655.

The matter to be noticed sets forth the evidence and argument presented to the jury in the trial court at petitioner's trial. The trial court at petitioner's trial had no need to take judicial notice of the evidence.

The matter to be noticed may be judicially noticed pursuant to Evidence Code section 452, subdivision (a) which provides that judicial notice

may be taken of the records of any court in this state.

The matter to be noticed is based on proceedings in the trial court prior to the time petitioner filed his petition for writ of habeas corpus, which resulted in the subsequent proceedings in the Superior Court and the Court of Appeal in *In re Lopez*, No. A152748. This is the case that resulted in the judgment that is presently on review before this Court in this case.

References to portions of the trial testimony, evidence, and argument are a necessary part of the argument in this case. Petitioner requests that judicial notice be taken of the record in *People v. Amante, et al.*, No. A113655, so that petitioner may refer to the record in his briefs.

A proposed order is attached.

DATED: May 20, 2020

Respectfully submitted,

/s/ Victor J. Morse

Victor J. Morse

Attorney for Petitioner

Rico Ricardo Lopez

Appointed by the Supreme Court

In the Supreme Court of the State of California

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In re)	
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[Proposed] Order

With good cause appearing, petitioner’s request that this Court take judicial notice of the records in petitioner’s prior direct appeal in *People v. Amante, et al.*, No. A113655 is hereby granted.

Date:

Chief Justice, California Supreme Court

**Declaration of Service By Mail
and Electronic Service By Truefiling**

In re Rico Ricardo Lopez on Habeas Corpus (No. S258912)

I, Victor J. Morse, declare that I am a citizen of the United States, over 18 years of age, employed in the County of San Francisco, State of California, and not a party to the subject cause. My business address is 3145 Geary Boulevard, PMB # 232, San Francisco, California 94118-3316. I served a true copy of the attached

Petitioner's Request for Judicial Notice

on the following, by placing copies thereof in envelopes addressed as follows:

Mr. Rico Ricardo Lopez # F 23451
California Correctional Institution
P.O. Box 1902
Tehachapi, CA 93581

District Attorney
600 Administration, # 212-K
Santa Rosa, CA 95403

Superior Court Clerk
600 Administration Drive
Santa Rosa, CA 95403

(Attn.:

Judge Dana Beernink Simonds)

Each said envelope was then, on May _20, 2020, sealed and deposited, in the United States Mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

On May 20, 2020, I caused the TrueFiling website to transmit a PDF version of this document by electronic mail to each of the following using the email addresses indicated:

First District Appellate Project
eservice@fdap.org

Attorney General
SFAGDocketing@doj.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 20, 2020, at San Francisco, California.

/s/ Victor J. Morse
Victor J. Morse

STATE OF CALIFORNIA
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA
Supreme Court of CaliforniaCase Name: **LOPEZ (RICO RICARDO) ON H.C.**Case Number: **S258912**Lower Court Case Number: **A152748**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **victormorse@comcast.net**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S258912_OBM_Lopez
REQUEST FOR JUDICIAL NOTICE	S258912_MOT_Lopez

Service Recipients:

Person Served	Email Address	Type	Date / Time
Victor Morse Attorney at Law 120916	victormorse@comcast.net	e-Serve	5/20/2020 9:36:03 AM
Bridget Billeter Office of the Attorney General 183758	bridget.billeter@doj.ca.gov	e-Serve	5/20/2020 9:36:03 AM
Attorney General	SFAGdocketing@doj.ca.gov	e-Serve	5/20/2020 9:36:03 AM
First District Appellate Project	eservice@fdap.org	e-Serve	5/20/2020 9:36:03 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/20/2020

Date

/s/Victor Morse

Signature

Morse, Victor (120916)

Last Name, First Name (PNum)

Law Office of Victor J. Morse

Law Firm