In the Supreme Court of the State of California

In re

ABELINO MANRIQUEZ,

On Habeas Corpus.

Case No. S141210

Related to *People v. Manriquez*, Supreme Court Case No. S038073

Los Angeles County Superior Court, Case No. VA004848
The Honorable Robert Armstrong, Judge

RETURN TO ORDER TO SHOW CAUSE

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TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

I. PRELIMINARY STATEMENT

On February 17, 2006, counsel for petitioner filed a petition for writ of habeas corpus. Thereafter, on January 10, 2008, counsel for petitioner filed the first amended petition for writ of habeas corpus. On January 23, 2008, this Court ordered respondent to file an informal response to the first amended petition. Thereafter, on June 20, 2012, this Court issued an Order to Show Cause ("OSC") why relief should not be granted on the ground of juror misconduct, as alleged in Claim 2 of the first amended petition.[1]

Pursuant to this Court's OSC of June 20, 2012, Kevin Chappell, Acting Warden of San Quentin State Prison, hereby makes this Return to Claim 2 of the petition for writ of habeas corpus filed February 17, 2006, and amended on January 10, 2008, and admits, denies, and alleges as follows:

II. CUSTODY OF PETITIONER

Petitioner is in the lawful custody of the warden of the California State Prison in San Quentin, California, awaiting execution under a judgment of death resulting from his valid conviction and sentence in Los Angeles County Superior Court case number VA004848, which was affirmed on direct appeal in all respects. (See *People v. Manriquez* (2006) 37 Cal.4th 547, 591.) Respondent specifically denies that petitioner's

[1] Respondent respectfully requests that this Court take judicial notice of its records, including all documents filed on behalf of petitioner and respondent in the course of petitioner's automatic appeal (*People v. Manriquez* (2005) 37 Cal.4th 547) and the instant habeas corpus proceedings.

convictions and sentence of death were unlawfully and unconstitutionally imposed in violation of any state or federal constitutional right.

III. STANDARD OF REVIEW

In *People v. Duvall* (1995) 9 Cal.4th 464, this Court clarified the procedures applicable upon the issuance of an OSC. An OSC "signifies the court's *preliminary* determination that the petitioner has pleaded sufficient facts that, *if true*, would entitle him to relief." (*Id.* at p. 475, emphasis added.) The return to the OSC is required to allege facts tending to show the petitioner's confinement is legal and also respond to the petition's factual allegations. (*Id.* at p. 476.) Where appropriate, the return should also provide such documentary evidence as will allow the court to determine which issues are truly in dispute. (*Ibid*; see *In re Gay* (1998) 19 Cal.4th 771, 783-784, fn. 9.) Put another way, the issuance of an OSC does not establish a prima facie determination that the petitioner is entitled to the relief requested. (*In re Serrano* (1995) 10 Cal.4th 447, 454-455.) The court will not order an evidentiary hearing unless it determines there are *material facts* in dispute. (*People v. Duvall, supra*, 9 Cal.4th at p. 480.)

The return need not prove the petitioner's factual allegations are wrong:

> [I]f an evidentiary hearing is held, it is the petitioner who bears the burden of proof. At this *pleading* stage, however, the general rule has been that respondent must either admit the factual allegations set forth in the habeas corpus petition, or *allege additional facts* that *contradict* those allegations. If a dispute arises regarding material facts, the appellate court will then appoint a referee to determine the true facts at a hearing in which the petitioner will have the burden of proof. At this early stage, however, the People's burden is one of pleading, not proof.

(*Id.* at p. 483, emphasis in original, footnote omitted.)

Since a judgment is presumed to be valid, a "petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to *prove* them." (*People v. Duvall, supra*, 9 Cal.4th at p. 474, emphasis in original.) To satisfy the initial burden of pleading adequate grounds for relief, the petition should both "state fully and with particularity the facts on which relief is sought" and "include copies of reasonably available documentary evidence supporting the claim." (*Ibid.*) In other words, "[c]onclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing," especially when the petition is prepared by counsel, since the reviewing court must "presume the regularity of proceedings that resulted in a final judgment." (*Ibid.*, quoting *People v. Karis* (1988) 46 Cal.3d 612, 656.) Ultimately, the petition should be evaluated based on its contents. (*In re Clark* (1993) 5 Cal.4th 750, 781, fn. 16.)

IV. CLAIM 2 (JUROR MISCONDUCT)

The OSC asks why relief should not be granted on the ground of juror misconduct as alleged in Claim 2 of the first amended petition. Claim 2 is set forth in paragraphs 534 through 564 of the first amended petition, and relies in material part on answers provided by juror C.B. in the "post verdict juror questionnaire" provided by the defense (Pet. Exh. 24) and the declaration subsequently provided to defense counsel by juror C.B. (Pet. Exh. 123).

A criminal defendant has the right to a trial by an impartial jury under both the federal and state Constitutions. (U.S. Const., amends. VI and XIV; Cal. Const., art. I, § 16; *Irvin v. Dowd* (1961) 366 U.S. 717, 722 [81 S.Ct. 1639, 6 L.Ed.2d 751]; *In re Hamilton* (1999) 20 Cal.4th 273, 293-294.) An impartial jury is "one in which no member has been improperly influenced" and "every member is capable and willing to decide the case solely on the

evidence before it." (*In re Hamilton, supra*, 20 Cal.4th at p. 294 (internal citations and quotation marks omitted).

During jury selection, the parties have the right to challenge and excuse candidates who clearly or potentially cannot be fair. (*In re Hamilton, supra*, 20 Cal.4th at p. 295.) Of course, voir dire is the vehicle used to discover actual or potential juror bias. "'A juror who conceals relevant facts or gives false answers during the voir dire examination thus undermines the jury selection process and commits misconduct. [Citations.]'" (*Ibid.*, quoting *In re Hitchings* (1993) 6 Cal.4th 97, 111; see also *McDonough Power Equipment, Inc. v. Greenwood* (1984) 464 U.S. 548, 554 [104 S.Ct. 845, 78 L.Ed.2d 663] [Noting that voir dire protects a defendant's right to an impartial trier of fact "by exposing possible biases, both known and unknown, on the part of potential jurors"].)

When juror misconduct has occurred, prejudice is presumed and the prosecution bears the burden of rebutting the presumption. (*People v. Marshall* (1990) 50 Cal.3d 907, 949-951.) The conviction must be reversed if the misconduct impaired jury impartiality, lightened the prosecution's burden of proof, or negated a defense. (*People v. Von Villas* (1992) 11 Cal.App.4th 175, 256.)

As is particularly relevant in the instant context, the mere fact a juror provides inaccurate information during voir dire does not automatically mean that juror has committed prejudicial misconduct. "To invalidate the result of a . . . trial because of a juror's mistaken, though honest response to a question [on voir dire], is to insist on something closer to perfection than our judicial system can be expected to give." (*McDonough Power Equipment, Inc. v. Greenwood, supra*, 464 U.S. at p. 555.) "A trial represents an important investment of private and social resources, and it ill serves the important end of finality to wipe the slate clean simply to recreate the peremptory challenge process because counsel lacked an item

of information which objectively he should have obtained from a juror on voir dire examination." (*Ibid.*)

A. Juror C.B. Did Not Intentionally Conceal Information From The Parties (Paragraphs 535-549)

Respondent denies that juror C.B. committed an intentional act of misconduct, or that she was biased against petitioner in any way. Juror C.B. indicated in her pre-trial questionnaire that she had never been the victim of a crime, been present during a violent act, seen a crime being committed, or been in a situation where she feared being hurt or killed. (CT Supp. I 2494-2495.) After the trial, in the "post verdict juror questionnaire" provided by the defense, juror C.B. was asked, "Is there anything else about this case you would like to tell us or suggestions you wish to offer so that trials may be improved in the future?" In response, juror C.B. stated in relevant part:

> The mitigating circumstances offered during the sentencing phase was actually a detriment in most of the jurors minds, especially mine. I grew up on a farm where I was beat, raped, & used for slave labor from the age of 5 thru 17. I am successful in my career and am a very responsible law abiding citizen. It is a matter of choice!

(Pet. Exh. 24 at 234, emphasis in original.)

On August 28, 2007, in response to a request from a defense investigator, juror C.B. provided a declaration about her service on petitioner's jury. (Pet. Exh. 123 at 1140-1143.) More recently, on August 9, 2012, juror C.B. provided a declaration to counsel for respondent which directly addresses the apparent conflict between the answers she provided on the pre-trial and post-trial questionnaires. (Exh. A at 1-2.) As set forth below, juror C.B. did not intentionally conceal information from the parties, and in any event, there is no substantial likelihood that that juror C.B. was actually biased against petitioner.

When juror C.B. was answering the pre-trial questionnaire, she answered the questions "as honestly as [she] could," and "did not attempt to conceal any information from anybody." (Exh. A at 1.) In direct response to the seeming conflict between the pre-trial questionnaire and the post-verdict questionnaire, juror C.B. stated:

> When I answered the [pre-trial] questionnaire, I was not thinking about the abuse I suffered as a child, because those are not memories I keep at the forefront of my mind. It was only after the defendant presented evidence of his childhood abuse as mitigating circumstances that I thought about the abuse I had suffered as a child.

(Exh. A at 1.)

Juror C.B. further explained:

> Specifically, when I was asked in questions 63 through 66 of the pre-trial juror questionnaire if I or anyone close to me had ever been the victim of a crime, been present during a violent act, witnessed a crime being committed, or feared being hurt or killed, I did not think that those questions were asking about things that happened to me during my childhood. Instead, I believed the questions were asking about things that happened to me as an adult. That is the reason I did not disclose the fact that I was raped when I was five years old, or abused as a child.

(Exh. A at 1-2.)

Juror C.B. also stated:

> I did not try to conceal the fact that I had been raped and abused as a child, and freely shared that information with my fellow jurors during the penalty phase deliberations after the defendant offered evidence of his own abusive childhood as mitigating circumstances.

(Exh. A at 2.) In closing, juror C.B. stated, "Nobody in the jury room had any doubt of the defendant's guilt." (Exh. A at 2.)

Juror misconduct involving the concealment of material information on voir dire raises the presumption of prejudice. (In re Hitchings, supra, 6 Cal.4th at p. 119; *Wiley v. Southern Pacific Transportation Co.* (1990) 220

Cal.App.3d 177, 189 [applying the presumption of prejudice standard in case involving concealment on voir dire].) This presumption may be rebutted by an affirmative evidentiary showing that prejudice does not exist, or by a reviewing court's examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party resulting from the misconduct. (*In re Hitchings, supra*, 6 Cal.4th at p. 119, internal quotations marks omitted; see also *People v. Miranda* (1987) 44 Cal.3d 57, 117, overruled on other grounds by *People v. Marshall* (1990) 50 Cal.3d 907, 933, fn. 4.) However, "[w]hat is clear is that an honest mistake on voir dire cannot disturb a judgment in absence of proof that the juror's wrong or complete answer hid the juror's actual bias." (*In re Hamilton, supra*, 20 Cal.4th at p. 300; see also *People v. Wilson* (2008) 44 Cal.4th 758, 823 [inadvertent or unintentional failures to disclose as a result of misunderstanding or forgetfulness do not constitute good cause for removal of a juror].) "Moreover, the juror's good faith when answering voir dire questions is the most significant indicator that there was no bias." (*Ibid*, citing *McDonough Power Equipment, Inc. v. Greenwood, supra*, 464 U.S. at pp. 556-557 (conc. opn. of Blackmun, J.); *id.* at pp. 557-558 (conc. opn. of Brennan, J.).)

Whether an individual verdict must be overturned for jury misconduct or irregularity is resolved by reference to the substantial likelihood test, an objective standard which asks whether the misconduct is inherently likely to have influenced the juror. (*People v. Harris* (2008) 43 Cal.4th 1269, 1303; *In re Hitchings, supra*, 6 Cal.4th at p. 118; see also *People v. Marshall, supra*, 50 Cal.3d at pp. 950-951.) "Any presumption of prejudice is rebutted, and the verdict will not be disturbed," if the record, including the nature of the misconduct and the surrounding circumstances, "indicates there is no reasonable probability of prejudice, i.e., no substantial likelihood that one or more jurors were actually biased against the defendant."

(*People v. Harris, supra*, 43 Cal.4th at p. 1303-1304; *In re Hamilton, supra*, 20 Cal.4th at p. 296.)

On the basis of the record and declarations submitted by the parties, there is no substantial likelihood that juror C.B. was actually biased against petitioner. Initially, substantial and credible evidence shows that juror C.B. did not intentionally conceal information related to the abusive experiences of her childhood. The declaration provided by juror C.B. unambiguously states that she did not intentionally conceal information related to her own childhood abuse. (Exh. A at 1-2.) Juror C.B. explained that thoughts about her childhood rape and abuse "are not memories [she] keep[s] at the forefront of [her] mind," and that she believed the pre-trial questionnaire was inquiring about events that occurred as an adult, not as a child. (Exh. A at 1.) The fact that juror C.B. did not intentionally conceal information is a key indicator that she held no bias against petitioner. (*In re Hamilton, supra*, 20 Cal.4th at p. 300; see also *McDonough Power Equipment, Inc. v. Greenwood, supra*, 464 U.S. at pp. 556-557 (conc. opn. of Blackmun, J.); *id.* at pp. 557-558 (conc. opn. of Brennan, J.).)

Moreover, nothing in any of the other evidence contradicts the detailed explanation provided in juror C.B.'s most recent declaration. Although obviously aware of the apparent conflict between the answers provided in the pre-trial and post-verdict questionnaires, petitioner inexplicably appears to have never asked juror C.B. to explain the alleged inconsistencies. (See Pet. Exh. 123 at 1140-1143.) Furthermore, juror C.B. volunteered information about her childhood to petitioner's trial counsel in the post-trial questionnaire (see Exh. A at 2), a clear indication she never intended to conceal or hide this information. Finally, juror C.B. unequivocally stated that she was not biased against petitioner, and that all of her decisions were based on the evidence presented at trial. (Exh. A at 1.) Courts my properly rely on such statements in addressing claims of

juror bias. (See, e.g., *Smith v. Phillips* (1982) 455 U.S. 209, 215 [102 S.Ct. 940, 71 L.Ed.2d 78] [court may ascertain the impartiality of a juror by relying solely upon the testimony of the juror in question]; *id.* at p. 217, fn. 7 ["One may not know or altogether understand the imponderables which cause one to think what he thinks, but surely one who is trying as an honest man to live up to the sanctity of his oath is well qualified to say whether he has an unbiased mind in a certain matter"], quoting *Dennis v. United States* (1950) 339 U.S. 162, 171 [70 S.Ct. 519, 94 L.Ed. 734].)

For many of the same reasons set forth above, Petitioner's claim that juror C.B.'s responses evidenced a "presumptive, implied bias" (Pet. at 222) is likewise meritless. "Although intentional concealment of material information by a potential juror may constitute implied bias justifying his or her disqualification or removal [citations], mere inadvertent or unintentional failures to disclose are not accorded the same effect." (*People v. McPeters* (1992) 2 Cal.4th 1148, 1175, abrogated by statute on another point as recognized in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106-1107.) Here, juror C.B.'s declaration makes it clear that there was no intentional concealment of material information. (Exh. A at 1-2.) Instead, juror C.B. did not discuss her abusive childhood in the pre-trial questionnaire because she believed the questions were directed at her experiences as an adult, not a child. (Exh. A at 1.) Given these facts, petitioner's implied bias claim should also be rejected.

In sum, a review of the record, including the declarations submitted by juror C.B. at the request of both petitioner and respondent, as well as the surrounding circumstances, shows that there is no substantial likelihood that juror C.B. was actually biased against petitioner. As such, petitioner's claim should be rejected.

B. Juror C.B. Did Not Introduce "Extraneous Facts" During Deliberations (Paragraphs 550-552)

Petitioner also claims that juror C.B. "committed misconduct by improperly injecting her own, untested and specialized knowledge into the penalty phase deliberations when she informed jurors of facts she claimed to know regarding life on Mexican farms." (Pet. at 223-224.) Respondent denies that juror C.B. injected any "extraneous facts" or specialized outside knowledge into the deliberations. Regardless, even if juror C.B.'s comments are considered to be "outside knowledge," petitioner suffered no prejudice.

Juror misconduct may exist when extraneous information of either a legal or factual nature that was not presented as a part of the evidence or instructions at trial is introduced during deliberations. (*In re Stankewitz* (1985) 40 Cal.3d. 391, 397; *People v. Nesler* (1997) 16 Cal.4th 561, 578.) This prohibition does not preclude a juror from discussing life experiences, including education and professional work, as this necessarily shapes his or her views of the evidence. Instead, a juror may """not discuss an opinion explicitly based on specialized information obtained from outside sources. Such injection of external information in the form of a juror's own claim to expertise or specialized knowledge of an issue is misconduct."""" (*People v. San Nicolas* (2004) 34 Cal.4th 614, 649.) Put another way, "[j]urors are not allowed to obtain information from outside sources either as to factual matters or for guidance on the law." (*People v. Karis, supra*, 46 Cal.3d at p. 642; see also *People v. Barton* (1995) 37 Cal.App.4th 709, 715.)

People v. Nesler, supra, 16 Cal.4th at page 561 is instructive in this regard. In *Nesler*, a juror received information about the defendant from a woman who claimed to have been the defendant's babysitter. During deliberations, the juror stated she "knew" the defendant's babysitter, and remarked that the defendant would leave her children for long periods of

time, was not a good mother, and used illegal drugs. (*Id.* at p. 574.) The juror argued to her fellow jurors that "if [they] knew what she knew" they would find the defendant sane. (*Id.* at p. 571.)

Here, unlike *Nesler*, juror C.B. did not "obtain information" from "outside sources" about any factual matters, or for guidance on the law. Nor did she argue to her colleagues on the jury that she had specialized information about life on Mexican farms. Instead, juror C.B.'s declaration states: "I had heard that life on farms in Mexico was real tough, with long work hours and very little food. Again, I did not accept this as an excuse and said so." (Pet. Exh. 123 at 1142-1143.)

Simply stated, juror C.B.'s comments were fair comments based on the evidence presented at trial. A review of the record shows extensive testimony was presented by two of petitioner's cousins, his half sister, and his aunt about the abusive conditions petitioner was forced to endure as a child. For example, Cecilia Solis, petitioner's cousin, testified that petitioner worked from 3:00 a.m. to 5:00 p.m. (9RT 2169, 2179), was not allowed to play or speak during meals (9RT 2175-2178), and was severely punished (9RT 2169-2178). Likewise, Crescencia Tamayo, petitioner's aunt, testified that petitioner was hit in the stomach with a belt buckle, and other times whipped with a belt. (9RT 2191-2196.)

Given this testimony, it was not inappropriate for juror C.B. to comment that life on Mexican farms was "real tough, with long work hours and very little food." Certainly "it is not improper for a juror, regardless of his or her educational or employment background, to express an opinion on a technical subject, so long as the opinion is based on the evidence at trial." (*In re Malone* (1996) 12 Cal.4th 935, 963.) The evidence presented here does not show that juror C.B. offered the jurors any basis for deciding the case other than the evidence and testimony presented at trial. No declaration suggests juror C.B. offered extrajudicial evidence that life on

Mexican farms was not difficult. Indeed, quite the opposite occurred -- juror C.B. shared her belief that it was "real tough, with long hours and very little food." (Pet. Exh. 123 at pp. 1142-1143.) Juror C.B.'s comments, therefore, were based on the very same testimony presented at trial. Stated differently, no declaration alleges that juror C.B. made any assertion inconsistent with the properly admitted evidence and testimony. (See *People v. Yeoman* (2003) 31 Cal.4th 93, 161.) That juror C.B. commented that she too had heard that life on Mexican farms was "real tough" was nothing more than her take on the evidence, which she properly added to the deliberations. "'Indeed, lay jurors are expected to bring their individual backgrounds and experiences to bear on the deliberative process. That they do so is both a strength of the jury system and a weakness that must be tolerated.'" (*Ibid.*, quoting *People v. Pride* (1992) 3 Cal.4th 195, 268.)

In any event, assuming arguendo that juror C.B. improperly shared with the other jurors her belief that life of farms in Mexico was "real tough, with long work hours and very little food," there is no possibility the comments prejudiced petitioner. Indeed, juror C.B.'s comments were so general that they are unlikely to have influenced anyone at all. However, juror C.B.'s comments -- which were extremely brief -- actually *corroborated* the testimony presented on petitioner's behalf, and logically would therefore have accrued to his benefit. In sum, given the nature of the comments, assuming they were improperly made, there is no substantial likelihood that any juror was biased as a result. (*In re Carpenter, supra*, 9 Cal.4th at p. 653.)

C. Juror C.B. Did Not Conceal Or Hold A Bias In Favor Of The Death Penalty (Paragraphs 553-557)

Petitioner also claims that juror C.B. was "biased in favor of imposing the death penalty because she was concerned that Petitioner would be

released from prison before his natural death." (Pet. at 224.) Respondent denies that juror C.B. was biased in favor of the death penalty, or that she did not fairly and impartially consider the penalty phase evidence.

Initially, it appears that much of the evidence relied upon by petitioner in support of this claim is inadmissible. A verdict may not be impeached by inquiry into the juror's mental or subjective reasoning processes, and evidence of what the juror "felt" or how he understood the trial court's instructions is not competent. (*People v. Steele* (2002) 27 Cal.4th 1230, 1261; see also Evid. Code, § 1150.) Here, to the extent that petitioner is relying on juror C.B.'s statements that she "felt it was important" to "rid the earth" of petitioner, or that she "felt that there was an outside chance" he would be released, such evidence is clearly inadmissible. (Evid. Code, § 1150; *People v. Steele, supra*, 27 Cal.4th at p. 1261; see also *People v. Morris* (1991) 53 Cal.3d 152, 231, overruled on another point in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

Contrary to petitioner's position (see Pet. at 225-226), juror C.B. did not "conceal" a bias in favor of the death penalty. When asked in the pre-trial questionnaire about her feelings regarding the death penalty, juror C.B. replied, "I believe that it is necessary in some situations." Juror C.B. also stated that the death penalty is justified in cases of "cold blooded murder or mutilation," and believed that capital punishment "serves as an example to *others and it removes a person who is obviously very dangerous from society*." (CT Supp. I 2501, emphasis added.) It is difficult to see how such statements are evidence of a juror who has "concealed" a bias in favor of capital punishment.

Regardless, there is no evidence that juror C.B. was biased, "refused" to follow the law, or "concealed an intention not to follow instructions." Petitioner's claim is based on a tortured reading of juror C.B.'s statements, all of which clearly show that she voted to impose the death penalty based

on the evidence presented at trial -- just as she indicated she would during voir dire. Assuming they can be considered, juror C.B.'s statements do not support petitioner's claim for relief. Juror C.B.'s post-trial statement that she voted for death because she "cannot allow a man like [petitioner] the remotest possibility of ever being on the street again" (Pet. Exh. 24 at p. 232) reflects her entirely appropriate opinion, reached after hearing the evidence, convicting petitioner of four murders, and hearing the penalty phase evidence. Indeed, juror C.B. expressly stated in her most recent declaration that her decisions were based entirely on the evidence presented during the trial proceedings. (Exh. A at 1.) Likewise, Juror C.B.'s post-trial statement that she understood life without parole "meant he would never be paroled, but I also felt that there was always an outside chance that a prisoner would somehow be released or go free" (Pet. Exh. 24 at p. 225) did not constitute misconduct or demonstrate bias. (See *People v. Steele, supra*, 27 Cal.4th at pp. 1264-1265 ["The possibility that sometime in the future a person might be released, perhaps because of a change in the law, is a matter 'of common knowledge appreciated by every juror who must choose between a death sentence and a sentence of life without parole'"].)

In sum, juror C.B.'s post-trial statements cannot be used or construed to support petitioner's allegation that she was biased in favor of the capital punishment.

D. Petitioner's Allegation That Several Jurors Were Biased Against Hispanic Immigrants Is Unsupported By Any Evidence Whatsoever (Paragraphs 558-564)

Petitioner also claims that several jurors were biased against Hispanic immigrants. (Pet. at 226-228.) He has failed to state a prima facie case for relief. Assuming this claim is properly before the Court, respondent denies that any juror was biased as petitioner states.

Initially, petitioner has failed to state a claim for relief that unidentified jurors were "biased against Hispanic immigrants," based upon juror C.B.'s declaration that during deliberations "there was an occasional comment" that petitioner "was not even a citizen and he comes over here and kills people." (Pet. Exh. 24 at p. 227.) As above, these comments reflect juror C.B.'s subjective reasoning process, and are inadmissible. (Evid. Code, § 1150; *People v. Steele, supra*, 27 Cal.4th at p. 1261; *People v. Morris, supra*, 53 Cal.3d at p. 231.) To the extent that the statements are admissible, they do not suggest misconduct or bias of any sort. Indeed, rather than misconduct or an indication of bias, juror C.B.'s declaration is an accurate summary of what the evidence established: petitioner came to the United States from Mexico, murdered the four people in the charged counts, and was involved in the three Paramount murders. Put another way, nothing in any of juror C.B.'s statements suggests that she or anyone else in the jury room was biased against Hispanic people. As such, petitioner's claim should be rejected.

CONCLUSION

For the reasons stated, respondent respectfully requests that the order to show cause be discharged, and that the first amended petition be denied.

Dated: September 5, 2012

Respectfully submitted,
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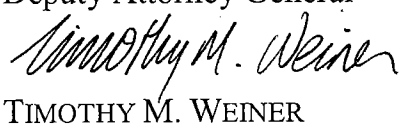

TIMOTHY M. WEINER
Deputy Attorney General
Attorneys for Respondent

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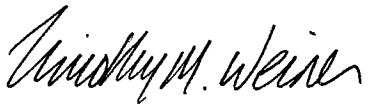
CERTIFICATE OF COMPLIANCE

I certify that the attached Return to Order to Show Cause uses a 13-point Times New Roman font, and contains 4,622 words.

Dated: September 5, 2012

KAMALA D. HARRIS
Attorney General of California



TIMOTHY M. WEINER
Deputy Attorney General
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EXHIBIT A

DECLARATION OF CONSTANCE MARIE BENNETT

I, Constance Marie Bennett, of La Mirada, California, hereby declare:

1. I am submitting this declaration in connection with the case of *People v. Abelino Manriquez*, in which I served as a juror and also as the jury foreperson in 1993.

2. On August 6, 2012, I met with Deputy Attorney General Timothy Weiner and Special Agent Christie Beach to discuss the answers I provided in my pre-trial juror questionnaire and post-verdict juror questionnaire. Deputy Attorney General Weiner and Special Agent Beach informed me that they were employed by the California Attorney General's office. Deputy Attorney General Weiner further informed me that he was a state prosecutor assigned to handle the appellate and habeas prosecution in the *Manriquez* case.

3. I freely agreed to speak with Deputy Attorney General Weiner and Special Agent Beach about my service as a juror on this case.

4. Prior to being seated as a juror, I had no knowledge or information about the defendant, his background, the crimes he committed, or anything related to the case.

5. I was not biased against the defendant, and based all of my decisions on the evidence that was presented during the trial.

6. When I was filling out the pre-trial juror questionnaire, I answered the questions as honestly as I could. I did not attempt to conceal any information from anybody. When I answered the questionnaire, I was not thinking about the abuse I suffered as a child, because those are not memories I keep at the forefront of my mind. It was only after the defendant presented evidence of his childhood abuse as mitigating circumstances that I thought about the abuse I had suffered as a child.

7. Specifically, when I was asked in questions 63 through 66 of the pre-trial juror questionnaire if I or anyone close to me had ever been the victim of a crime, been present during a violent act, witnessed a crime being committed, or feared being hurt or killed, I did not think that those questions were asking about things that happened to me during my childhood. Instead, I believed the questions were asking about things that happened to me as an adult. That is the reason I did not disclose the fact that I was raped when I was five

years old, or abused as a child.

8. After the trial ended, I received a post-verdict juror questionnaire that asked if there was anything about the case I would like to say. When I disclosed that I had been raped and abused as a child, it was because I had been through the trial and heard the defendant say he was a victim because he grew up on a work farm and been abused. I wanted to explain that I also had abusive experiences as a child, but chose not to become a violent person or commit violent crimes.

9. Everyone has choices to make in their life. When I discussed my abusive childhood with my fellow jurors, it was to explain my belief that the defendant made a lot of bad choices even though he did not have to do so just because of his past. That is why I disclosed what happened to me as a child when I did.

10. I did not try to conceal the fact that I had been raped and abused as a child, and freely shared that information with my fellow jurors during the penalty phase deliberations after the defendant offered evidence of his own abusive childhood as mitigating circumstances.

11. Nobody in the jury room had any doubt of the defendant's guilt.

I declare under penalty of perjury of the laws of the United States and the State of California that the statements made in this declaration are true and correct to the best of my knowledge. This declaration is executed in the City of La Mirada, California on Aug 9, 2012.

Constance M Bennett

Constance Marie Bennett

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *In re Abelino Manriquez On Habeas Corpus*
No.: **S141210**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On September 6, 2012, I served the attached **RETURN TO ORDER TO SHOW CAUSE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 6, 2012, at Los Angeles, California.

Consuelo Esparza
Declarant

Signature

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