Supreme Court No. S269647
Court of Appeal No. F079209
Superior Court No. VCF109133B

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

JUVENTINO ESPINOZA,

Defendant and Petitioner.

OPENING BRIEF ON THE MERITS

Appeal from Order After Judgment of the Superior Court
Of Tulare County, The Honorable Steven Barnes, Judge
Presiding

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ISSUE PRESENTED

The Court has granted review for the following issue: Did the Court of Appeal err in ruling that defendant failed to adequately corroborate his claim that immigration consequences were a paramount concern and thus that he could not demonstrate prejudice within the meaning of Penal Code section 1473.7?

INTRODUCTION

The Court of Appeal below focused its attention on one factor present in *People v. Vivar* (2021) 11 Cal.5th 510 (*Vivar*) rather than considering the "totality of the circumstances" to determine whether immigration consequences were a paramount concern to Juventino Espinoza within the meaning of Penal Code section 1473.7. The unrebutted circumstances of Mr. Espinoza's life establish that avoiding deportation would have been a paramount concern if he had been advised that it would be a consequence of his plea. The Court of Appeal focused on the lack contemporaneous correspondence that had been present in *Vivar*, however, there could be no such correspondence in Mr. Espinoza's case since he was never advised of the issue.

Mr. Espinoza moved to the United States from Mexico in 1981 and built a life for himself and his family. At the time of his plea to drug related charges in 2004, he was married and had children. He had become a Lawful Permanent Resident. He owned a home with his wife. His parents and siblings lived here. Everything important in his life was in the United States.

Mr. Espinoza's greatest concern at the time of his plea was

being separated from his family. His attorney's assistant told him that they had made a deal for probation that would not require him to serve actual jail time. Neither his attorney nor the assistant discussed his immigration status with him. When he entered the plea, he did not understand that pleading to the charges would result in his deportation or other immigration consequences. His attorney's assistant told him in Spanish to plead no contest and that everything was going to be fine. He followed that advice.

Mr. Espinoza was surprised when he showed up to the Day Reporting Center ("DRC") to alternatively satisfy the 365-day jail sentence that was a condition of his probation. He was taken into custody to do his time away from his family in the jail itself. His wife immediately contacted his lawyer and was told by the assistant that the attorney would make some calls to find out why he was taken into custody. Mr. Espinoza and his wife never heard back from the attorney. Mr. Espinoza served his jail time and successfully completed probation. He believed that everything else was fine.

For over 10 years, following his conviction, Mr. Espinoza had no idea that his immigration status as a Lawful Permanent Resident was compromised. As a result, he booked an international flight in 2015. Upon his return, he was detained by immigration officials at the airport in Fresno. His residency card was confiscated and he was served with paperwork initiating a removal proceeding based on his 2004 convictions. This is the first time he became aware of the immigration consequences of

his 2004 plea.

Mr. Espinoza immediately tried to address the matter in unsuccessful motions to set aside the plea before the superior court. In 2019, after Penal Code section 1473.7 had been amended to clarify that a showing of ineffective assistance of counsel is not required, Mr. Espinoza filed a renewed motion to vacate his conviction pursuant to the statute. The trial court denied the motion and Mr. Espinoza appealed.

While Mr. Espinoza's appeal was pending, this Court issued its opinion in *People v. Vivar* (2021) 11 Cal.5th 510. Mr. Espinoza had presented ample corroborating evidence of his strong ties to the United States and the fact that he was not aware of the immigration consequences until 2015. Despite this evidence, the Court of Appeal purported to distinguish *Vivar* by focusing on the fact that Mr. Espinoza did not present contemporaneous statements on the record, notes or correspondence with his attorney to support his claim that immigration was a paramount concern. The Court of Appeal's formulaic reading of *Vivar* as requiring such documentation was error. This interpretation of the statute would make relief impossible for defendants such as Mr. Espinoza, whose lawyer never discussed immigration consequences with him and when, as a result, he only became aware of immigration consequences years later.

Evidence of Mr. Espinoza's strong ties to the United States at the time of his plea adequately corroborates his claim that immigration consequences were a paramount concern and

demonstrates prejudice within the meaning of Penal Code section 1473.7. To disqualify him and the rest of the class of people who did not document immigration concerns because their lawyers failed to even discuss immigration consequences from relief would arbitrarily exclude people who were within the Legislature's clear purpose in enacting the statute.

STATEMENT OF FACTS

Juventino Espinoza migrated to the United States in 1981 when he was 13 years old. (CT 172.) He is a citizen of Mexico and has been a Lawful Permanent Resident of the United States since 1986. (CT 146; 172.) At the time of his plea, he had been living in the United States for approximately 23 years. (CT 172.) He and his wife had owned their home for approximately ten years. (CT 70.) His wife and five children are United States citizens. (CT 172.) His parents and eight siblings are either Lawful Permanent Residents or United States citizens. (*Ibid*.)

Mr. Espinoza was charged in a first amended felony information on July 15, 2003 with conspiracy to manufacture methamphetamine in violation of Penal Code section 182(a)(1), manufacturing a controlled substance in violation of Health and Safety Code section 11379.6(a), possession of methamphetamine analogs with intent to manufacture methamphetamine in violation of Health and Safety Code section 11383(c), allowing a place for preparation or storage of a controlled substance in violation of Health and Safety Code section 11366.5(a), child abuse in violation of Penal Code section 273a(a) and possession of a controlled substance in violation of Health and Safety Code

section 11350. (CT 20-25; 147.)

On January 5, 2004, Mr. Espinoza pleaded no contest to violations of Penal Code section 182(a), Health and Safety Code section 11366.5(a), Penal Code section 273a(a) and Health and Safety Code section 11350. (CT 26-27; 147.) On February 2, 2004, the court sentenced him to 9 years, 8 months and suspended the execution of sentence for five years, with 365 days in the county jail to be served as a condition of probation. (CT 26-27; 147; 173.)

At the time of his plea, Mr. Espinoza was not informed by his attorney that entering pleas to the charges would result in his deportation, exclusion from admission to the United States and denial of naturalization. (CT 172; 175.) He was instead told by his attorney, through the attorney's assistant, that, if he pleaded no contest, everything would be fine. (CT 173; 175.)

Mr. Espinoza stated under oath that, at the time of the plea, his greatest concern was being separated from his children and family. (CT 173.) If he had understood that his plea would lead to removal from his family in the United States, he "would have made a different choice and even 'agreed to a longer jail sentence.'" (CT 173.) If Mr. Espinoza had been meaningfully informed of the serious immigration consequences of the plea, he would not have accepted the government's offer and would have taken the case to trial if necessary, given his strong ties to the United States. (CT 172; 175.)

In 2015, Mr. Espinoza first learned of the adverse immigration consequences of his convictions when immigration authorities commenced removal proceedings upon his return from

Mexico at the Fresno airport. (CT 165-167; 173; 176.) His conviction under Health and Safety Code section 11366.5 is a controlled substance offense and crime of moral turpitude which renders him subject to removal. (CT 169.) It is also an aggravated felony for immigration purposes. (*Ibid.*) The conviction significantly precludes Mr. Espinoza's opportunity for relief from removal as it makes him ineligible, as a noncitizen convicted of an aggravated felony, from most forms of relief under immigration law. (*Ibid.*) He would otherwise be eligible for Cancellation of Removal. (*Ibid.*)

His conviction under Health and Safety Code section 11350(a) for possession of cocaine also makes him removable as it is a controlled substance offense. (CT 169.) His conviction under Penal Code section 182(a)(1) for conspiracy to violate Health and Safety Code section 11379.6 is also a controlled substance offense. (*Ibid.*) Furthermore, his conviction under Penal Code section 273a(a) is a deportable offense as a crime of child abuse. (*Ibid.*) As a result of the plea, Mr. Espinoza is in grave danger of losing his Lawful Permanent Resident status, being ineligible for naturalization, being removed from the United States and being separated from his family. (*Ibid.*)

STATEMENT OF THE CASE

Mr. Espinoza initially challenged his convictions by filing a non-statutory motion to vacate on November 3, 2017. (CT 28-51.) On November 29, 2017, Respondent filed an opposition to the motion. (CT 52-64.) On December 1, 2017, the motion was heard and denied by the superior court on the grounds that it was

untimely. (RT 6-7; CT 65.)

On March 9, 2018, Mr. Espinoza filed a "Motion to Vacate Conviction Under California Penal Code § 1473.7." (CT 66-117.) Respondent filed an opposition to the motion on April 11, 2018. (CT 118-131.) On June 19, 2018, Mr. Espinoza filed a reply to the opposition. (CT 135-142.) On June 20, 2018, the motion was heard and denied on the grounds that the record did not support the allegation of ineffective assistance of counsel and that it was untimely. (RT 22; CT 143.)

On March 18, 2019, Mr. Espinoza filed a "Renewed Motion to Vacate Judgment. Amended Pen. C. § 1473.7" following the amendment to Penal Code section 1473.7 effective January 1, 2019. (CT 144-211.) On April 5, 2019, Respondent filed an opposition to the motion. (CT 212-222.) On April 9, 2019, the motion was heard and denied by the superior court on the grounds that "there's an insufficient finding by the required standard of evidence as to whether or not the conviction is legally invalid, which would then, by their – which would thereby damage the moving party's ability to meaningfully understand events and knowingly accept the adverse immigration consequences of the plea." (RT 31; CT 223.) Mr. Espinoza filed a timely notice of appeal. (CT 224-225.)

While the appeal was pending, this Court issued its opinion in *People v. Vivar* (2021) 11 Cal.5th 510 (*Vivar*), holding that showing prejudicial error under section 1473.7, subdivision (a)(1) means demonstrating a reasonable probability that the defendant would have rejected the plea if the defendant had correctly

understood its actual or potential immigration consequences. (*People v. Vivar*, *supra*, 11 Cal.5th 510, 529.) Despite a showing of very similar evidence to the evidence presented by the defendant in *Vivar*, the Court of Appeal below affirmed the superior court's denial of the motion, holding that Mr. Espinoza failed to present contemporaneous evidence corroborating his claim immigration consequences were a paramount concern. (*People v. Espinoza* (May 28, 2021, F079209) [nonpub. opn.], p. 6 (hereafter "Opn.").)

This Court granted review on September 15, 2021.

ARGUMENT

I. THE COURT OF APPEAL ERRED IN RULING THAT MR. ESPINOZA FAILED TO ADEQUATELY CORROBORATE HIS CLAIM THAT IMMIGRATION CONSEQUENCES WERE A PARAMOUNT CONCERN AND THUS HE COULD NOT DEMONSTRATE PREJUDICE WITHIN THE MEANING OF PENAL CODE SECTION 1473.7

A. Standard of Review

Appellate courts independently review rulings on motions brought under Penal Code section 1473.7, subdivision (a) that rely entirely on documentary evidence. (*Vivar*, *supra*, 11 Cal.5th at p. 527.) In such cases, "'the trial court and this court are in the same position in interpreting written declarations' when reviewing a cold record in a section 1473.7 proceeding.'" (*Id.* at p. 528, quoting *People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 79.)

Here, Mr. Espinoza's motion brought under section 1473.7,

subdivision (a) was based entirely on documentary evidence. Therefore, "it is for the appellate court to decide, based on its independent judgment, whether the facts establish prejudice under section 1473.7." (*Vivar*, *supra*, 11 Cal.5th at p. 528.)

B. The Court of Appeal Below Applied *Vivar* Formulaically

Under Penal Code section 1473.7, a person who is no longer in custody may file a motion to vacate a conviction or sentence if "[t]he conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence." (Pen. Code, § 1473.7, subd. (a)(1).) The defendant must make this showing by a preponderance of the evidence. (*Vivar*, *supra*, 11 Cal.5th at p. 517.) The defendant is not required to demonstrate ineffective assistance of counsel. (*Ibid*.)

This Court has held that section 1473.7 is part of the statutory scheme to "ensure these defendants receive clear and accurate advice about the impact of criminal convictions on their immigration status, along with effective remedies when such advice is deficient." (*Vivar*, *supra*, 11 Cal.5th at p. 516.) These protections implement the defendant's right to the effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution. (See *Lee v. U.S.* (2017) —— U.S. ——— [137 S.Ct. 1958, 1961].)

This Court held that a showing of prejudicial error under section 1473.7, subdivision (a) requires "demonstrating a

reasonable probability that the defendant would have rejected the plea if the defendant had correctly understood its actual or potential immigration consequences." (*Vivar*, *supra*, 11 Cal.5th at p. 529.) Courts are to consider the "totality of the circumstances." (*Id.* at p. 529.) The factors that are "particularly relevant to this inquiry include the defendant's ties to the United States, the importance the defendant placed on avoiding deportation, the defendant's priorities in seeking a plea bargain, and whether the defendant had reason to believe an immigration-neutral negotiated disposition was possible." (*Id.* at pp. 529-530.)

In *Vivar*, this Court emphasized the evidence of that defendant's strong ties to the United States. He had been brought to the United States as a lawful resident as a child and "attended schools, formed a family, and remained here for 40 years." (*Vivar*, *supra*, 11 Cal.5th at p. 530.) He also had a wife, children and grandchildren who were all citizens of the United States. (*Ibid.*) When he found out about the immigration hold shortly after his plea, the defendant sent letters objecting to his hold and trial counsel had contemporaneous notes reflecting he was concerned about the "'consequences'" of his plea. (*Ibid.*) Finally, the defendant could have entered a plea avoiding mandatory deportation had he known the immigration consequences of his ultimate plea. (*Id.* at p. 531.)

Here, Mr. Espinoza also demonstrated through corroborating evidence that there is a "a reasonable probability that the defendant would have rejected the plea if the defendant had correctly understood its actual or potential immigration

consequences." (*Vivar*, *supra*, 11 Cal.5th at p. 529.) Similar to the defendant in *Vivar*, Mr. Espinoza has deep and lifelong ties to the United States. Mr. Espinoza was brought to the United States as a child at 13 years old and became a Lawful Permanent Resident approximately five years later. (CT 146; 172.) At the time of his plea, Mr. Espinoza had been living in the United States for approximately 23 years and he and his wife had owned their home for about 10 years. (CT 70, 172.) Mr. Espinoza's wife and children are United States citizens. (CT 172.) Moreover, his parents and siblings were either Lawful Permanent Residents or United States citizens. (CT 172.) Thus, just as in *Vivar*, Mr. Espinoza attended schools, formed a family and remained in the United States for decades. (See *Vivar*, *supra*, 11 Cal.5th at p. 530.)

The Court of Appeal below considered this Court's opinion in *Vivar* but applied it in a formulaic fashion. The court distinguished Mr. Espinoza's case from *Vivar* by focusing on the fact that "the defendant [in *Vivar*] quickly learned of adverse immigration consequences after his conviction by plea and 'promptly sent a series of letters to the court expressing confusion about the situation ....' [Citation.]" (Opn., p. 7.) The Court of Appeal stated that, "[i]mportantly, these letters were written 'at or near the time of his plea' and memorialized concerns about immigration. [Citation.]" (Opn., p. 7.) The Court of Appeal further stated that "Espinoza's concerns regarding immigration consequences could have been documented prior to settling the case, in conversations with plea counsel." (Opn. 7.)

However, this ignores the fact that Mr. Espinoza did not have a similar opportunity to contemporaneously memorialize his immigration concerns because his lawyer failed to discuss immigration consequences with him at all. He only found out about these serious consequences in 2015 when he took a trip to Mexico and returned to the United States on an international flight to the Fresno airport. (CT 165-167; 173; 176.) Upon his return, immigration authorities commenced removal proceedings. (*Ibid*.) Returning to the United States and thereby subjecting himself to the scrutiny of immigration officials is not the behavior of someone who meaningfully understood that his convictions effectively ended his lawful resident status.

The Court of Appeal below pointed to the fact that Mr. Espinoza alleged in his initial Penal Code section 1473.7 motion, filed prior to the amendment of the statute and prior to the motion at issue in this appeal, that he was also unaware at the time of the plea that he was to serve jail time. (Opn., p. 7.) The court stated that,

> "[i]n a similar vein, however, neither did he express any on-the-record confusion nor hesitation when actually incarcerated – despite claiming he was caught unaware. Nor did he later pen any letters documenting his lament at incarceration. This evidentiary void casts material doubt on his credibility."

(Opn., p. 7.)

This conclusion of the Court of Appeal is not supported by the evidence. In the initial Penal Code section 1473.7 motion regarding jail time, Mr. Espinoza stated he was advised by his

counsel through his attorney's Spanish speaking assistant that he would not do jail time and would get a program. (CT 71.) The motion stated that, when Mr. Espinoza reported to the DRC on April 29, 2004 expecting to start the program, he was instead arrested. (CT 72.) The motion stated that Mr. Espinoza's wife spoke with his attorney's assistant the same day and was told by the assistant that the attorney would make some calls to find out why he was taken into custody. (*Ibid*.) The motion further stated that Mr. Espinoza and his wife never heard back from the attorney although they tried on several occasions to contact him with no success. (*Ibid*.)

Thus, contrary to the assertion in the opinion below, Mr. Espinoza did contemporaneously attempt to complain to his counsel regarding the jail sentence. This fact supports Mr. Espinoza's claim that separation from his family, even by jail time, was a concern of his at the time of the entry of his plea.

The fact that Mr. Espinoza misunderstood the jail component of his sentence and immediately attempted to act upon it supports his claim that he would have been concerned about the adverse immigration consequences had his lawyer advised him. While a 365-day jail sentence is a significant burden, it pales in comparison to being permanently removed from the only life he has ever known with his wife, children, siblings and parents in the United States.

Rather than considering the "totality of the circumstances," the Court of Appeal below engaged in a formulaic comparison of the specific facts of *Vivar* to the specific facts of this case. By

doing so, the Court of Appeal misinterpreted *Vivar* to deny relief in cases that do not include contemporaneous notes or correspondence documenting a defendant's claim that immigration consequences were a paramount concern. (See Opn., pp. 6-7.) Of course, Mr. Espinoza did not have contemporaneous notes or correspondence because his lawyer never discussed the issue with him. There would have been no reason for him to raise the issue on the record or to write a letter to his attorney until over 10 years later when he was shockingly confronted with his attorney's failure.

Mr. Espinoza stated under oath that had he understood that his plea would lead to removal from his family in the United States, he "would have made a different choice and even 'agreed to a longer jail sentence.'" (CT 173.) Mr. Espinoza corroborated this statement with evidence of his deep ties to the United States established over the decades he had lived in the United States at the time of his plea. His behavior after the plea, namely taking an international flight to return to the United States after a trip, only further corroborates that he was truly unaware of the serious immigration consequences of his plea. Therefore, Mr. Espinoza demonstrated prejudice within the meaning of Penal Code section 1473.7 and this Court's opinion in *Vivar*.

C. The Interpretation of Penal Code section 1473.7 by the Court Below Is Inconsistent with Other Courts of Appeal

The Court of Appeal's formulaic approach below is not only contrary to this Court's opinion in *Vivar* but also is inconsistent

with the interpretation of section 1473.7 taken by other Courts of Appeal both before and after *Vivar*. The court's opinion below is an outlier.

For example, before this Court's opinion in *Vivar*, the Court of Appeal in *People v. Camacho* (2019) 32 Cal.App.5th 998, 1010 (*Camacho*), held that the "defendant may show prejudice by 'convinc[ing] the court [that he] would have chosen to lose the benefits of the plea bargain despite the possibility of or probability deportation would nonetheless follow.'" The court found "compelling evidence" of prejudice based on the fact that the defendant "was brought to the United States over 30 years ago at the age of two, has never left this country, and attended elementary, middle, and high school in Los Angeles county." (*Id.* at p. 1011.) He was married to a United States citizen with an American citizen son and, at the time of his motion, an American citizen daughter. (*Ibid.*) He was employed and had no other adult criminal convictions. (*Ibid.*) The court concluded that the "defendant showed by a preponderance of evidence that he would never have entered the plea if he had known that it would render him deportable, the errors which damaged his ability to meaningfully understand, defend against, or knowingly accept the adverse immigration consequences of a plea were prejudicial." (*Id.* at pp. 1011-1012.)

Similarly, in another leading case prior to this Court's opinion in *Vivar*, the Court of Appeal in *People v. Mejia* (2019) 36 Cal.App.5th 859, 872 (*Mejia*), found that there was "contemporaneous evidence in the record to substantiate Mejia's

claim that he would not have pleaded guilty had he known about the mandatory and dire immigration ramifications." In that case, the court stated that Mejia was 22 years old at the time and had been living in the United States for eight years with his wife, infant son, his mother and his six siblings. (*Ibid.*) The Court stated that, "[i]n short, if Mejia had meaningfully understood the mandatory immigration consequences of his guilty pleas in 1994 (permanent deportation), versus the potential risks and rewards of going to trial, it is reasonably probable that he would not have pleaded guilty." (*Id.* at p. 873.)

After this Court decided *Vivar*, the Court of Appeal in *People v. Rodriguez* (2021) 68 Cal.App.5th 301, 325 (*Rodriguez*), found that under the circumstances and in light of the defendant's "deep, lifelong bonds in the United States, we fail to see how any court could confidently look back and conclude that if she had understood the consequences of her plea, Rodriguez would not have bargained for an immigration-neutral plea deal or risked going to trial in an effort to avoid certain deportation." In that case, Rodriguez came to the United States when she was one year old and lived in Napa her entire life. (*Id.* at p. 316.) She was in a committed relationship and had two children. (*Ibid.*) At the time she was arrested, she was pregnant with her third child. (*Ibid.*) She had never lived in Mexico and did not have family ties or community in Mexico. (*Ibid.*) Rodriguez was married to a United States citizen, her mother and siblings were United States citizens and her father a Lawful Permanent Resident. (*Rodriguez*, *supra*, 68 Cal.App.5th at p. 317.) Rodriguez's

attorney at the time of the plea took extensive notes that did not include any reference to a discussion of immigration consequences. (*Ibid*.) The Court in that case did not find the lack of contemporaneous notes or correspondence documenting Rodriguez's concerns regarding immigration to disqualify her from relief.

The Court of Appeal found that this showing "plainly met this 'reasonable probability' standard." (*Rodriguez*, *supra*, 68 Cal.App.5th at p. 324.) The court also found "Rodriguez's deep, lifelong ties to the United States" to be sufficient in that they were "very similar" to those considered by this Court in *Vivar*. (*Rodriguez*, *supra*, 68 Cal.App.5th at p. 324.)

Finally, in *People v. Alatorre* (2021) 70 Cal.App.5th 747, 771 (*Alatorre*), also decided after *Vivar*, the defendant stated that (1) he was still a preschooler when he came to the United States in 1987; (2) all of his family lived in the United States; (3) he married a U.S. citizen, and together they had two children who are both citizens; and (4) his single involvement with the criminal justice system led to his continuing separation from his family. Based on this showing, the court found it "reasonably probable that if he had understood the certain immigration consequences of his plea, he would have either pressed for an immigration-neutral deal, if possible, or taken his case to trial." (*Ibid*.) The court stated "[h]is deep ties to the United States provide "contemporaneous evidence" that avoiding deportation would have been a paramount concern if he had truly understood his situation." (*Ibid*., citing *Lee v. U.S.* (2017) —— U.S. ——— [137

S.Ct. 1958, 1961].)

The Court of Appeal's formulaic application of its reading of *Vivar* in Mr. Espinoza's case to require contemporaneous notes is inconsistent with analyses of other Courts of Appeal. *Camacho* and *Mejia* interpreted section 1473.7 independently and *Rodriguez* and *Alatorre* interpreted the statute in light of *Vivar*. All four cases rely on the same sort of biographical facts that are present in the instant case. Here, the unrebutted biographical facts are that Mr. Espinoza was a Lawful Permanent Resident; that he had resided in the United States for more than 20 years at the time of the plea; that he owned a home with his wife and children who were United States citizens; that his other family members were United States citizens or Lawful Permanent Residents. Just like the other cases and this Court's opinion in *Vivar*, Mr. Espinoza established it is probable that he would not have accepted the plea had he been properly advised. Where other courts and this Court in *Vivar* emphasized the totality of the circumstances, the Court of Appeal below devalued the importance of those ties and gave undue significance to the lack of contemporaneous notes.

Mr. Espinoza, like the defendants in *Vivar*, *Camacho*, *Mejia*, *Rodriguez* and *Alatorre*, put forth unrebutted evidence of his strong ties to the United States to corroborate his claim that he would have rejected the plea bargain had he meaningfully understood that it would result in his removal from everything important in his life.

CONCLUSION

Mr. Espinoza respectfully requests that this Court reverse the Court of Appeal's decision affirming the denial of his Penal Code section 1473.7 motion and order that the motion be granted based on the contemporaneous evidence corroborating his claim immigration consequences were a paramount concern.

Dated: January 14, 2022 Respectfully submitted,

SANGER SWYSEN & DUNKLE

By: /s/ Stephen K. Dunkle
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California Rules of Court, Rule 8.520(c)(1)

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Dated: January 14, 2022

/s/ Stephen K. Dunkle
Stephen K. Dunkle

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Case Number: **S269647**
Lower Court Case Number: **F079209**

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