IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. MARLON FLORES, Defendant and Appellant.	Supreme Court No. S267522 Court of Appeal No. B305359 Superior Court No. BA477784

AMICUS CURIAE APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF AND BRIEF OF THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION AND CONTRA COSTA COUNTY PUBLIC DEFENDER IN SUPPORT OF APPELLANT FLORES

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AMICUS CURIAE APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF IN SUPPORT OF APPELLANT FLORES AND BRIEF OF AMICUS CURIAE

Pursuant to Rule 8.520 of the California Rules of Court, the California Public Defenders Association (CPDA) and the Contra Costa County Public Defender Office (CCPD) respectfully apply for permission to file the attached amicus brief in support of Appellant Flores.

APPLICATION OF CPDA TO APPEAR AS AMICUS CURIEA ON BEHALF OF APPELLANT

Identification of CPDA, CCPD, and Interests

CPDA is the largest association of criminal defense attorneys and public defenders in the State of California. With a membership of more than 4,000 criminal defense attorneys and associated professionals, CPDA is an important voice of the criminal defense bar.

CPDA has been a leader in continuing legal education for defense attorneys for a half century. It is an approved provider of Mandatory Continuing Legal Education and Criminal Law Specialization Education and is one of only two organizations deemed by the Legislature to be an "automatically" approved legal education provider. (Bus. & Prof. Code, § 6070, subd. (b).)

Courts have granted CPDA leave to appear as *Amicus Curiea* in numerous California cases that culminated in published opinions. (See, e.g., *People v. Alibillar* (2010) 51 Cal.4th 47 [sufficiency of evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [preliminary hearing discovery]; *People v. Lenix* (2008) 43 Cal.4th 602 [comparative juror analysis for the first time on appeal]; *People v. Nelson* (2008) 43 Cal.4th 1242 [DNA evidence in a cold hit case].)

CPDA has also served as *Amicus Curiea* in the United States Supreme Court. (See e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be expected to play a significant role in the suspect's

defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

CCPD represents thousands of indigent defendants each year, many of whom are similarly situated to Mr. Flores.

CPDA and CCPD are familiar with the briefing and issues in this case. Public defenders litigate the multitude of motions to suppress throughout California and are intimately familiar with the effects of heavy policing on communities of color.

Authors and Absence of Monetary Contribution

Gilbert Rivera, Deputy Public Defender for Contra Costa County, as a member of CPDA, authored the attached brief. No one has made a monetary contribution intended to fund the preparation or submission of this brief.

Date:

Respectfully submitted,

_____/s/_____
Gilbert Rivera
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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AMICUS CURIAE BRIEF OF THE CALIFORNIA PUBLIC DEFENDER'S ASSOCIATION AND CONTRA COSTA COUNTY PUBLIC DEFENDER OFFICE IN SUPPORT OF APPELLANT FLORES

INTRODUCTION

Impoverished communities of color are subject to heightened police presence and interference in daily life. A minor traffic stop or run of the mill detention can quickly become fatal for black men, black women and Latino/as. George Floyd, Daunte Wright, Philando Castile, Eric Garner, Sandra Bland, and Elijah McClain are, sadly, household names associated with unnecessary death due to police violence. Each unfortunate life

was lost as the result of a detention due to a minor (suspected) criminal or traffic violation.

It is an unfortunate American reality that poor communities of color fear the police. In *Illinois v. Wardlow* (2000) 528 U.S. 119, 140, fn. 7, Justice Stevens, writing in dissent, cited to statistics showing that 43 percent of African Americans consider police violence and harassment in their community a serious problem. Police are also aware of their problematic perception as supported by the Independent Commission of the Los Angeles Police Department's report showing that 25 percent of LAPD officers surveyed agreed that racial prejudice by officers exists. (*Id*. at fn. 9.) One study found that 73 percent of Mexican Americans in East Los Angeles believed police use discriminatory frisk tactics and 68 percent believed police use unnecessary force. (Felker-Kantor, Policing Los Angeles: Race, Resistance, and the Rise of the LAPD (2018), p. 23.)

Poor communities of color holding a distrust of police is not unwarranted. The 2024 Racial and Identify Profiling Advisory Board Annual Report found that black individuals were stopped by law enforcement at a higher rate than expected "given their relative proportion of the California population" and Latino/as made up the majority of individuals stopped by police. (Racial and Identity Profiling Advisory Board, Annual Report 2024, Jan. 1, 2024, pp. 6-7.) Additionally, people of color were searched at higher rates than White individuals. (*Id*. at 8.)

Historically, police power has been deployed to uphold racial hierarchies and maintain racialized spaces. (See Felker-Kantor, Policing Los Angeles: Race, Resistance and the Rise of the LAPD (2018); Lytle Hernandez, City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965 (2017.) Furthermore, "[l]aw enforcement has been foundationally designed to serve patriarchal, white propertied, interests" as a tool of social control to police the behavior of black and white women. (Fischer, The Streets Belong to Us Sex, Race, and the Police Power from Segregation to Gentrification (2022), p. 17.) Law in the U.S. cannot be divorced from racism and sexism. (See Lopez, White By Law: The Legal Construction of Race (2nd. 2006), Pascoe, What Comes Naturally: Miscegenation Law and the Making of Race (2009). Black and brown skin has historically been associated with crime. (See Muhammad, The Condemnation of Blackness: Race, Crime, and the Making of Urban America (2019); Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 Journal of Personality and Social Psychology 6, 876-93 (2004).

This fact of life impels African American and Latino/a parents to teach their children how to "properly behave" when interacting with a police officer. As Justice Sotomayor aptly describes:

> For generations, black and brown parents have given their children "the talk"— instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them. See, e.g., W. E. B. Du Bois, The Souls of Black Folk (1903); J.

> Baldwin, The Fire Next Time (1963); T. Coates, Between the World and Me (2015).
> *Utah v. Strieff* (2016) 579 U.S. 232, 254 (dis. opn. of Sotomayor, J.)

This Court's decision in this matter will strike at the very heart of that talk.

This case presents a question of utmost constitutional and practical importance to every citizen in California: the right to avoid or ignore police. (*Florida v. Royer* (1983) 460 U.S. 491, 498.)

How can a person exercise the constitutional right to avoid police contact in a manner that police will view as "arrestable behavior?" (Fischer, *supra*, at p. 8.) As the dissent pointed, the court's decision "leaves virtually no room for [a] person's conduct to be deemed 'normal' and hence not suspicious." (*People v. Flores* (2021) 60 Cal.App.5th 978, 991, dis. opn. of Stratton J.) In the eyes of police, what can a citizen do to avoid looking suspicious? "The majority opinion narrows the options for those who want to be judged 'normal' and hence beyond suspicion." (*Flores*, *supra*, 60 Cal.App.5th at 994, dis. opn. of Stratton J.)

The facts of this case are simple. Officer Daniel Guy testified that he detained Mr. Flores because he saw him "standing in the roadway next to a silver Nissan. And as [the police] approached closer, he ducked behind the rear passenger of the vehicle." (*Flores*, *supra*, 60 Cal.App.5th at 983.) Officer Guy and a partner were on patrol around 10 p.m. (*Id.* at 982.) The *Flores* majority characterized the neighborhood as a "high crime area" due to Officer Guy's testimony that it was a "narcotics hangout" where his partner had "made a drug arrest in that cul-

de-sac the night before." (*Id.*) The opinion does not specify if the arrest was for simple possession or possession for sales. The police "knew this cul-de-sac to be a gang haunt; taggers sprayed gang graffiti there." (*Ibid.*) As Officer Guy was approaching, Mr. Flores "looked in [his] direction." (*Id.*) Officer Guy did not testify that Mr. Flores noticed his presence or otherwise made eye contact. After the police saw Mr. Flores, he went to the passenger side, fender area of his car where the police believed he "appeared to be ducking down as if trying to hide or conceal something from us." (*Id.* at 982.) At this point, Officer Guy believed Mr. Flores was "there loitering for the use or sales of narcotics." (*Id.* at 983.)

Officer Guy parked his patrol vehicle behind Mr. Flores' car, exited his vehicle, and illuminated his way with a flashlight. (*Id.* at 985.) Officer Guy and another officer illuminated Mr. Flores with a spotlight. (*Id.* at 991.) As the dissent notes, the officers "converged on [Mr. Flores], one approaching him from behind…[while] the other officer approach[ed] him on the sidewalk from the other side, having walked around the front of the car in the meantime." (*Id.* at 992.) Mr. Flores was blocked by police, his car, and a fence. (*Id.*) As Officer Guy came closer to Mr. Flores, he saw Mr. Flores "crouching down" and "believe[d] he pretended to tie his shoe." (*Id.* at 986.) The dissent describes body cam video in evidence as showing Mr. Flores "bent over at the waist with his derriere high in the air (like a diver doing a jackknife)." (*Id.* at 991.) Mr. Flores' arms are stretched out and his hands are at his feet. (*Ibid.*) Mr. Flores' body "is not

completely 'hidden' behind the side of the car...his body protrudes past the back end of the car." (*Ibid.*)

Once illuminated by an officer's flashlight, Mr. Flores does not raise his head or otherwise react. (*Id.* at 985.) Around 9 seconds later, Officer Guy orders Mr. Flores to stand. (*Id.* at 986.) Mr. Flores does not react. Another 9 seconds later, an officer reorders Mr. Flores to stand and immediately follows with another order to "hurry up." (*Id.*) At this point, Mr. Flores stands and is ordered to place his hands behind his head. (*Id.*) The police conduct a pat-down search for weapons with negative results. (*Id.* at 236.)

The *Flores* majority held that a "*Terry* stop" was justified based on the trial court's three expressly found facts. First, that Mr. Flores "saw police and tried to avoid contact by ducking down behind a parked car." Second, that while ducking and crouching, Mr. Flores did not "freeze and remain still" but was "toying with his feet" despite "light and radio noise." Third, as the police approached and shone a light on him, he "persisted in his odd crouch for 'far too long a period of time.'" (*Flores*, *supra*, 60 Cal.App.5th at 989.) The majority conceded that "these facts did not establish Mr. Flores was engaged in illegal drug activity[.]" (*Id.*) Nonetheless, the Court of Appeal held that this detention and pat-down frisk did not violate the Fourth Amendment.

The court believed it was bound by the "federal approach" in *Wardlow* and affirmed the trial court's denial of the motion to suppress. The majority did not apply a totality of the circumstances analysis as required by the United Supreme Court

in *U.S. v. Sokolow* (1989) 490 U.S. 1, 7-9. The phrase "totality of the circumstances" cannot be found in the majority opinion.

Mr. Flores' actions as a person of color in the United States were perfectly reasonable. Under a totality of the circumstances analysis, Officer Guy did not have reasonable suspicion to detain Mr. Flores or conduct a pat-down search. There was insufficient evidence presented that the area Mr. Flores was located was a "high crime area." Mr. Flores' acts of ignoring or not noticing police were not and cannot be deemed suspicious under *Royer, supra*, 460 U.S at 498.

ARGUMENT

I. Under the Totality of the Circumstances, Police Did Not Have Reasonable Suspicion to Detain Mr. Flores

In *Terry v. Ohio* (1968) 392 U.S. 1, 23, our High Court held that police may conduct a search and seizure of a person based on a standard less than probable cause. Police may conduct an investigative detention short of arrest, based on an officer's "specific and articulable facts" that a person is engaged in criminal activity. (*Id*. at 21.) An officer may not rely on "inarticulate hunches." (*Ibid*.) An officer is entitled to conduct a separate and more intrusive search for weapons if he or she has reason to believe that he [or she] is dealing with an "armed and dangerous individual[.]" (*Id*. at 27.) Courts require an officer to have "reasonable suspicion, based on objective facts, that an individual is involved in *criminal activity*" to justify a detention. (*Brown v. Texas* (1979) 443 U.S. 47, 51 [emphasis added.]) Facts

proffered by law enforcement must not only indicate a generalized suspicion, but suspicion that crime is afoot.

A ruling court must evaluate the constitutionality of a search based on reasonable suspicion under "the totality of the circumstances...to determine the probability, rather than the certainty, of *criminal conduct*." (*Sokolow*, *supra*, 490 U.S. at 2, citing *United States v. Cortez* (1981) 449 U.S. 411, 417 [emphasis added].)

The only facts known to the officers at the point of detention were that Mr. Flores was in, as they described, a "high-crime area" and was bent behind a vehicle. Assuming he was intending to avert engagement with police, these facts, taken separately or together, do not justify a brief detention, let alone a pat-down search.

A. Mr. Flores was Detained When Police Blocked His Movement and Illuminated Him With a Flashlight

A detention occurs when, under the totality of the circumstances, a reasonable person would believe that he or she is not free to leave. (*United States v. Mendenhall* (1980) 446 U.S. 544, 554.)

A detention occurred here, as correctly pointed to by the *Flores*' dissent, when the two officers parked their car behind appellant's car, shined a spotlight on him, and flanked him from the front and back thereby blocking any escape route. (*Flores*, *supra*, 60 Cal.App.5th at 992.)

The dissent cited to two cases where previous courts held that shining a spotlight on a suspect coupled with approach and

commands or information inquiries were detentions. (*People v. Garry* (2007) 156 Cal.App.4th 1100; *People v. Roth* (1990) 219 Cal.App.3d 211.)

The majority disagreed with the dissent and found that Mr. Flores was detained at the point officers ordered him to stand and put his hands behind his head. (*Flores*, *supra*, 60 Cal.App.5th at 989.) The court's insistence that Mr. Flores "continued doing something with his hands" in police presence and remained in a crouched position for "far too long a period of time" were the main facts supporting its conclusion that a "*Terry* stop" was justified. Assuming arguendo that Mr. Flores was detained at the point where he was surrounded and ordered to stand, the facts of the case still do not support reasonable suspicion to detain.

B. There was Insufficient Evidence Presented that Mr. Flores Was in a "High Crime Area"

The Court of Appeal described the area where Mr. Flores was present as a "high crime area" and a "narcotics hangout" based solely on the Officer Guy's barebones assertion that this was a "known narcotics [area]." (*Id.* at 983.)

Since *Wardlow*, California appellate courts have not defined the constitutional parameters or explained evidence necessary to support a finding that a specific location is a "high crime area" under a reasonable suspicion analysis. Pre-*Wardlow*, this Court recognized that presence in a "high-crime area" is not an "activity of an individual...As a result, this court has appraised this factor with caution and has been reluctant to conclude that a location's crime rate transforms otherwise

innocent-appearing circumstances into circumstances justifying the seizure of an individual." (*People v. Bower* (1979) 24 Cal.3d 638, 645.)

Whether a locally defined area is a "high crime area" is a factual issue to be determined by the trier of fact. (See *United States v. Bonner* (3rd. Cir 2004) 363 F.3d 213, 216.) As federal courts have recognized, evidence of a high crime area must be supported by specific, objective facts. Facts supporting this conclusion may be (1) a nexus between crime common in the area and the type of crime suspected in justifying the detention; (2) the geographic boundaries of the area or neighborhood; and (3) a temporal proximity between evidence of heightened criminal activity and the date of the stop or search at issue. (See *U.S. v. Wright* (1st Cir. 2007) 485 F.3d 45, 53-54.)

Evidence that an area is factually a "high crime area" can be proved using statistical data rather than the post-hoc testimony of an officer making an arrest. (Wisniewski, *It's Time to Define High-Crime: Using Statistics in Court to Support an Officer's Subjective "High-Crime Area" Designation* (2012) 38 New Eng. J. on Crim. & Civ. Confinement 101 [proposing a bright-line rule defining a high crime area using statistical data commonly used by police departments].) Courts must require some degree of specificity when declaring an area "high crime."

Judicial acceptance of the use of "high crime area" as a consideration of reasonable suspicion has been criticized by scholars for its effect on black and brown citizens. "African Americans and Hispanics tend to populate the inner-city

neighborhoods often described as 'high crime areas.'" (Ronner, *Fleeing While Black, the Fourth Amendment Apartheid* (2001) 32 Colum. Hum. Rts. L. Rev 383, 423.) "By virtue of their relative socioeconomic status, not to mention persistent racial discrimination, African Americans and Hispanics find themselves in the very areas of cities labeled 'high crime areas' and 'drug trafficking locations.'" (Harris, *Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked* (1994) 69 Ind. L.J. 659, 677-78.) Courts must scrutinize law enforcement testimony that an area is a "high crime" area to ensure that such labels do not "serve as a proxy for race or ethnicity" and that the "factor is not used with respect to entire neighborhoods or communities...of minority groups[.]" (*U.S. v. Montero-Camargo* (9th Cir. 2000) 208 F.3d 1122, 1138.)

In this case, the boundary of this illicit area was not defined by the government. The prosecution did not proffer criminal statistics of arrests, type of arrests, neighborhood reports of an uptick in crime, or extra diverted resources to the "area." The record is entirely lacking in competent evidence to support that this locale was a "high crime area."

Assuming police saw Mr. Flores in a "high crime area," this circumstance automatically reduces his reasonable expectation of privacy. If Mr. Flores had lived in an affluent area of Los Angeles, police would not have deemed his behavior suspicious.

C. Mr. Flores Was Free to Avoid and Ignore Police and His Behavior Cannot Be Considered Suspicious

Each American has a fundamental and constitutional right to avoid contact with police. (*Florida v. Bostick* (1991) 501 U.S. 429, 437.) A person has every right to disregard a police officer's question and simply walk away (*Mendenhall*, *supra*, 446 U.S at 544.) Here, Mr. Flores had every right to ignore the presence of police and not engage in any type of communication. The Court of Appeal erroneously counted Mr. Flores' act of ignoring the police by crouching as suspicious rather than as an exercise of a constitutional right to ignore the police.

Citing to *Florida v. Royer*, *supra*, 491 at 497-498, , the majority asserts that each American has a fundamental freedom to refuse to cooperate with police, but then lists appellant's conduct in avoiding or attempting to ignore police as suspicious. (*Flores*, *supra*, 60 Cal.App.5th at 989.) The *Royer* Court was clear that "refusal to listen or answer does not, without more, furnish" reasonable suspicion to detain. (*Royer*, *supra*, 460 U.S. at 489.) Mr. Flores' moving behind a vehicle and ignoring police "for far too long a period of time" (*Flores*, *supra*, 60 Cal.App.5th at 989) is specifically a "refusal to listen" to a police officer and an act that cannot "furnish" suspicion to detain. (*Royer*, *supra*, 460 U.S. at 489.) Neither the trial court nor *Flores* majority explain which criminal activity his behavior suggests he was engaged in. The *Flores* majority admits that Mr. Flores' behavior "did not establish [he] was engaged in illicit drug activity[.]" (*Flores*, *supra*, 60 Cal.App.5th at 989.) The combination of his acts

combined with being in a so-called high-crime area did not provide reasonable suspicion that Mr. Flores was engaged in any type of criminal activity.

Furthermore, the police committed a separate violation of the Fourth Amendment when conducting a pat-down search of Mr. Flores. A frisk for weapons is justifiable when police have reasonable suspicion that a person is "armed and presently dangerous to the officer or others[.]" (*Terry*, *supra*, 392 U.S. at 23.) Here, police did not have evidence that Mr. Flores was armed or dangerous, and therefore did not have cause to frisk him for weapons.

As argued in the Introduction, people of color, like Mr. Flores, have valid safety concerns when encountering police and may reasonably seek to avoid or ignore police for fear of violence or harassment. Mr. Flores' behavior can be explained by "racial anxiety." "Racial anxiety refers to the concerns that arise both before and during interracial interactions." (Godsil, et al, *Racial Anxiety* (2016) 102 Iowa L. Rev. 2235, 2239.) Racial anxiety manifests when a person of color suffers "fear of being the victim of police racism, leading to worries that one will be subjected to police brutality on the one hand and rude, disrespectful and harassing treatment on the other." (*Id*. at 2251.) Black and Latino/a citizens have an appreciable and well-documented fear of police. (Weitzer, et al., *Perceptions of Racial Profiling: Race, Class and Personal Experience* (2002) 40 Criminology 435, 445; Woodard, et al., *Anticipatory Injustice Among Adolescents: Age*

and Racial/Ethnic Differences in Perceived Unfairness of the Justice System (2008) 26 Behave. Sci. & L. 207, 210;)

The officers here may have had an "understandable desire to assert police presence." (*Brown*, *supra*, 443 U.S. at 2.) However, Mr. Flores also had an understandable desire to ignore police presence. It is not unreasonable for Mr. Flores, as a person of color, to have made the conscious decision to ignore police. As the dissent in *Wardlow* recognized, "citizens, particularly minorities and those residing in high crime areas...with or without justification...believe[] that contact with the police can itself be dangerous[.]" (*Wardlow*, *supra*, 528 U.S. at 132, dis. opn. of Stevens, J.)

Courts must scrutinize an officer's opinions and conclusions to ensure that "an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." (*Brown*, supra, 443 U.S. at 51.)

Police have considered a wide array of mundane and highly-subjective circumstances as suggestive of wrongdoing: For example:

The area a person lives. (*Wardlow*, *supra*)*;* baggy clothing (*People v. Collier* (2008) 166 Cal.App.4th 1374, 1378); Casual clothing (*People v. Carlson* (1986) 187 Cal.App.3d Supp. 6, 23); Driving slowly (*United States v. Lopez-Martinez* (10th Cir. 1994) 25 F.3d 1481, 1486); Decelerating in the presence of police (*United States v. Villalobos* (5th Cir. 1998) 161 F.3d 285, 291); Driving under the speed limit (*People v. Gibson* (1963) 220 Cal.App.2d 15, 20); Acting nervously (*United States v. Andrews*

(6th Cir. 1979) 600 F.2d 563, 566; *Miramontes v. Superior Court* (1972) 25 Cal.App.3d 877, 881-882); Acting calmly (*United States v. Himmelwright* (5th. Cir 1977) 551 F.2d 991, 992); Making eye contact (*Wilson v. Superior Court* (1983) 34 Cal.3d. 377); Avoiding eye contact (*Carlson*, *supra*, 187 Cal.App.3d.Supp. 6 at 23.)

These behaviors are "too generic and susceptible to innocent explanation to satisfy the reasonable suspicion inquiry." (*Wardlow*, *supra*, 528 U.S. 119, dis. opn. of Stevens, J.) Courts must scrutinize an officers' characterization of multivalent behavior as suspicious given what we as a society know about implicit biases. (See Greenwald et al., *Implicit Bias: Scientific Foundations* (2006) 94 Cal. L.Rev. 945.)

CONCLUSION

The facts and circumstances of the case involving Mr. Flores cannot be separated from the reality that many young people of color are living. Mr. Flores exercised a constitutional right to avoid and ignore police and was penalized for it. For the reasons stated above, this Court should reverse the decision by the Court of Appeal.

Date: January 8, 2024

Respectfully submitted,

_____/s/_____

Gilbert Rivera
Deputy Public Defender
Contra Costa County

Certification of Word Count

I, Gilbert Rivera, hereby certify that the above-included brief consists of 3,584 words, according to the Microsoft Word word count function.

_____/s/_____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE CALIFORNIA Petitioner and respondent vs. MARLON FLORES Defendant and appellant.	Supreme Court OF Case No. S267522 Court of Appeal No. B305359 Superior Court No. BA477784

Proof of Service

I am a citizen of the United States and am employed in Contra Costa County. I am over the age of 18 years and am not a party to this action. My business address is 800 Ferry Street, Martinez, CA 94553.

On January 8, 2024, I served a correct copy of the attached Application to file amicus curiae brief and amicus curiae brief in support of appellant by placing a copy in office mail to the addressee below:

The Hon. Mildred Escobedo
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On January 8, 2024, I served a correct copy of the attached application of file amicus curiae brief and amicus curiae brief via electronic service via Truefiling.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on January 8, 2024, in Martinez, CA.

_____/s/_____
Gilbert Rivera
Declarant

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

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Case Number: **S267522**
Lower Court Case Number: **B305359**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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1/8/2024

Date

/s/Gilbert Rivera

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Rivera, Gilbert (311250)

Last Name, First Name (PNum)

Contra Costa County Public Defender

Law Firm