No. S141210

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

In re

ABELINO MANRIQUEZ,

On Habeas Corpus

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

(Los Angeles County Superior Court No. VA004848)

Hon. Robert Armstrong, Presiding

PETITIONER MANRIQUEZ'S TRAVERSE TO THE RETURN

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TRAVERSE TO THE RETURN TO PETITION FOR WRIT OF HABEAS CORPUS TO: THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to California Rule of Court 4.551(e) and the Order of the California Supreme Court, dated June 20, 2012, Petitioner Abelino Manriquez ("Manriquez" or "Petitioner") submits this Traverse to Respondent's Return (the "Return") to Order to Show Cause, and admits denies, and alleges as follows:

I. INTRODUCTION

In Manriquez's First Amended Petition for Writ Of Habeas Corpus, Manriquez established that: (1) Jury Foreperson Constance Bennett provided untruthful answers during jury selection on material questions that went to the core of Manriquez's mitigation defense; (2) her untruthful answers concealed facts in her personal life that closely resembled those relied on by Manriquez for his mitigation defense and made her less likely to accept his defense – constituting actual and implied bias against Manriquez; (3) she used those concealed facts to convince other jurors to reject Manriquez's mitigation defense; and (4) Manriquez was prejudiced as a result.

Respondent's Return does not dispute these facts. To the contrary, Juror Bennett's supplemental declaration filed with the Return *confirms* that the personal history she failed to disclose made her less likely to accept Manriquez's mitigation defense and *admits* that she cited those very facts to convince other jurors to reject his defense. Respondent's only serious attempt to explain why these facts do not justify relief is his claim that Juror Bennett's concealment was "unintentional." This claim is legally irrelevant

because the existence of Juror Bennett's bias is dispositive. Respondent's claim also fails because the record shows that Juror Bennett's concealment was intentional, entitling Manriquez to a presumption of prejudice that Respondent has not rebutted. Manriquez is thus entitled to relief. The penalty verdict – at the very least – must be overturned.

II. TRAVERSE STANDARD OF REVIEW

The "[i]ssuance of an [Order to Show Cause] signifies the Court's preliminary determination that [Manriquez] has pleaded sufficient facts that, if true, would entitle him to relief." (*People v. Duvall* (1995) 9 Cal.4th 464, 475.) Then in the Return, Respondent has the burden to controvert these facts. (*Id.* at p. 476.) In his Traverse, Manriquez must then admit or deny the allegations in the Return, framing the factual issues for the court to decide. (*Id.* at p. 477.) Respondent may admit material facts alleged in the Petition, and a failure to deny is an admission; if Manriquez's allegations are sufficient to justify relief, his Petition may be granted without an evidentiary hearing. "When the return effectively admits the material factual allegations of the petition and traverse by not disputing them, [the court] may resolve the issue without ordering an evidentiary hearing." *In re Sixto* (1989) 48 Cal.3d 1247, 1252.

III. INCORPORATION BY REFERENCE

Manriquez expressly incorporates and realleges by this reference each and every material fact alleged in his (1) February 17, 2006 Petition for Writ of Habeas Corpus; (2) January 10, 2008 First Amended Petition for Writ of Habeas Corpus as well as Exhibits 1 through 130 filed in support of the claims and facts alleged therein; and (3) June 30, 2009 Informal Reply to the Informal Response to Petition for Writ of Habeas Corpus as well as Exhibits 1 through 17 filed in support of the claims and facts alleged therein. (*People v. Romero* (1994) 8 Cal. 4th 728, 739; *In re*

Sixto, supra, 48 Cal.3d at p. 277; *In re Lewallen* (1979) 23 Cal.3d 274, 277.) Manriquez further expressly incorporates by this reference the legal discussion contained in these documents, as though fully set forth herein. (*In re Gay* (1998) 19 Cal.4th 771, 781 n.7.) Manriquez has pled sufficient facts that entitle him to relief under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article 1 sections 1, 7, 13, 14, 15, 16 and 17 of the California Constitution.

IV. DENIALS, EXCEPTIONS AND OBJECTIONS TO THE RETURN

Manriquez objects to Paragraph 5 of Exhibit A to the Return as it improperly relays Juror Bennett's "mental processes" in determining the verdict. (Cal. Evid. Code § 1150.) Specifically, by stating she was "not biased" and "based all of [her] decisions on the evidence that was presented at trial," Paragraph 5 of Exhibit A seeks to explain that her assent to the verdict was the effect of these alleged mental processes, in violation Section 1150. (*Krouse v. Graham* (1977) 19 Cal.3d 59, 81 ["An assertion that a juror privately 'considered' a particular matter in arriving at his verdict, would seem to concern a juror's mental processes, and declarations regarding them, accordingly, would be inadmissible under section 1150."]; *In re Stankewitz* (1985) 40 Cal.3d 391, 400 [juror statements that reflect "the subjective reasoning processes of the individual juror, which can be neither corroborated nor disproved" are inadmissible under section 1150]; *Bell v. Bayerische Motoren Werke Aktiengesellschaft et al.* (2010) 181 Cal.App.4th 1108, 1124-26 [declaration describing juror's interpretation of the special verdict form was inadmissible in violation of section 1150 to the extent it described "how [the jurors] arrived at their verdict"].)

Manriquez objects to Paragraph 11 of Exhibit A to the Return on four grounds. First, Juror Bennett lacks personal knowledge to state whether any other juror had "any doubt of the defendant's guilt." (Cal.

Evid. Code § 702.) Second, even if she was competent to make the statement, Paragraph 11 relays inadmissible hearsay. (Cal. Evid. Code § 1200.) Third, Paragraph 11 improperly relays juror "mental processes" in determining the verdict. (Cal. Evid. Code § 1150.) Specifically, by stating "[n]obody in the jury room had any doubt of the defendant's guilt," Paragraph 11 of Exhibit A seeks to explain that the jury's assent to the verdict was the effect of the mental process of not having "any doubt," in violation Section 1150. (*Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677, 1683 ["evidence about a jury's subjective collective mental process purporting to show how the verdict was reached" (quotations omitted) was inadmissible]; *Krouse v. Graham, supra*, 19 Cal.3d at p. 81.) Fourth, Paragraph 11 is irrelevant to any issue in this proceeding, and even if it was in some way relevant, its probative value is substantially outweighed by the risk of unfair prejudice to Manriquez. (Cal. Evid. Code. §§ 350, 352.)

In addition, Manriquez denies all allegations in the Return that are in any way contrary to or inconsistent with the facts alleged in Petitioner's Amended Petition for Writ of Habeas Corpus, and those described below. *See infra*, Section V.

Manriquez excepts to Respondent's Return and Exhibit A to the Return insofar as they fail to allege facts establishing the legality of Petitioner's conviction and sentence.

Manriquez objects to the Return and Exhibit A to the Return to the extent they present any facts related to Petitioner's underlying conviction as those facts that are not relevant to any issue in this proceeding. (Cal. Evid. Code. § 350.) Even if those facts were in some way relevant, their probative value is substantially outweighed by the risk of unfair prejudice to Petitioner. (Cal. Evid. Code. § 352.)

V. SUMMARY OF FACTUAL ALLEGATIONS

Juror Bennett's Pre-Trial Statements. Voir dire began with a pre-trial questionnaire, which all prospective jurors swore to answer truthfully: "Please respond to each question as fully and completely as possible . . . Because the questionnaire is part of the jury selection process, the questions are to be answered under your oath as a prospective juror to tell the truth." (CT Supp. I 2478.)[1] The questionnaire asked:

> 63. Have you or anyone close to you been the victim of a crime, reported or unreported?
>
> If "yes":
> (a) What kind of crime(s)?
> (b) How many times?
> (c) Who was the victim(s)?

(CT Supp. I 2495.) Juror Bennett answered "yes" to this question but only disclosed a robbery of her roommate's home, before they ever lived together. (CT Supp. I 2494-95.) The questionnaire further asked:

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[1] The Reporters' Transcript consists of 10 volumes, numbered consecutively from page 1 through page 2350. The Reporters' Transcript will be cited as "RT" followed by the page number. The Clerk's Transcript consists of four volumes, numbered consecutively from page 1 through page 971. The Clerk's Transcript will be cited as "CT" followed by the page number. There are also six sets of Clerk's Transcripts labeled "Supplemental" on the cover: Supplemental I consists of twelve volumes, numbered consecutively from page 1 through page 3269; Supplemental II consists of one volume, numbered from page 3270 through page 3343; Supplemental III consists of two volumes, numbered consecutively from page 3344 through page 3735; Supplemental 4 consists of one volume, numbered from page 3757 through page 3778; Supplemental 4A consists of one volume, numbered from page 3787 through page 3789; and Supplemental V consists of one volume, numbered from page 1 through page 117. The Supplemental Clerk's Transcripts are cited herein as "CT Supp." followed by the number of the supplemental transcript and the page number.

64. Have you or any relative or friend ***ever experienced*** or been present during a violent act, not necessarily a crime?

65. Have you ***ever seen*** a crime being committed?

66. Have you ***ever been in a situation*** where you feared being hurt or being killed as a result of violence of any sort?

(CT Supp. I 2494-95, emphasis supplied.) Juror Bennett answered "No" to these three questions, (CT Supp. I 2495), was eventually selected to serve on the jury, and became the foreperson. (RT 2329.)

During the penalty phase of the trial, Manriquez's mitigation defense focused on the abuse he suffered during his childhood working and living on a farm in Mexico. At the farm, Manriquez suffered brutal beatings two to three times a day at the hands of his grandmother and father. (RT 2169-74; 2191-93; 2203-05; 2223-27.) For example, when he was seven, Manriquez was tied to a tree, whipped, and then left there for the entire night. (RT 2170.) In addition to the beatings, Manriquez was forced to work on the farm from approximately three in the morning until five in the evening, 364 days a year. (RT 2179; 2196-97.) Also during the penalty phase, the State introduced evidence that Manriquez had committed rape. (RT 2138-39.)

Juror Bennett's Statements During Deliberations. Juror Bennett admits that "after the defendant presented evidence of his childhood abuse as mitigating circumstances," she "thought about the abuse I had suffered as a child." (Ex. A to Return, C. Bennett Decl. ¶ 6)

Juror Bennett also admits she described her own history of abuse to other jurors in deliberations, specifically because it affected the evaluation of Manriquez's mitigation defense. She "freely shared" her story of abuse

with the other jurors "during the penalty phase deliberations after the defendant offered evidence of his own abusive childhood as mitigating circumstances." (Ex. A to Return, C. Bennett Decl. ¶ 10.) "Having been through abuse myself, I do not view abuse as an excuse. I told the other jurors about my experience and my belief that childhood abuse was not an excuse." (Ex. 123 to Petition, Bennett Decl. PE 1142 ¶ 9.) She did so, she says, "to explain [her] belief that the defendant made a lot of bad choices even though he did not have to do so just because of his past." (Ex. A to Return, C. Bennett Decl. ¶ 12.) Even while she was sharing her history of abuse during deliberations – history that had been specifically called for by the voir dire questions – she did not inform the Court that her prior voir dire responses were wrong.

As a result, Manriquez's defense counsel never knew before or during trial that Juror Bennett's own life experiences closely mirrored those at issue in the case, and so had no opportunity either to challenge her for cause or to exercise a peremptory challenge. Indeed, counsel was denied the opportunity to voir dire her about her experiences.

With Juror Bennett at its helm, the jury found Manriquez guilty of four counts of first degree murder in the guilt phase of trial, and delivered a verdict of death in the penalty phase. At no time during either phase did Juror Bennett inform the court that her statements during voir dire might be inaccurate.

Juror Bennett's Post-Trial Statement and Declarations. After the trial, each juror received a post-verdict juror questionnaire. With the trial ended, Juror Bennett for the first time disclosed to the court and counsel a personal history of abuse and rape that was directly relevant to Manriquez's mitigation defense and the prosecution's aggravation evidence, and that was squarely inconsistent with her answers to questions 63-66 in the pre-trial questionnaire. Juror Bennett stated:

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

(Ex. 24 to Petition, Post-Verdict Questionnaire of Constance Bennett, PE 0234, emphasis in original.)

In a sworn declaration in support of Manriquez's Amended Petition for Writ of Habeas Corpus, Juror Bennett confirmed the abuse and rape she concealed before and during trial:

> As to the mitigating evidence, I recall that Manriquez grew up on a farm and was abused. . . . But, I was regularly beaten from age three to age seventeen while I lived with a foster mother on a farm in Pennsylvania. The farm was 160 acres and we worked hard on the farm. At the farm there was also a home for aged people and one of the residents raped me when I was five. Having been through abuse myself, I do not view abuse as an excuse. I told the other jurors about my experience and my belief that childhood abuse was not an excuse.

(Ex. 123 to Petition, C. Bennett Decl., PE 1142 ¶ 9.)

Juror Bennett's declaration also explained why she concealed her personal history during voir dire. She said the pre-trial questionnaire contained questions that "were intense," and "seemed to have no purpose," and that she believed that "[s]uperficial questions about where you were brought up, or your education, or income should be no one's business." (*Id.* at PE 1141 ¶ 4.)

In a new declaration submitted with Respondent's Return, Juror Bennett offers a different and inconsistent explanation for why she

concealed her abusive childhood during voir dire. Whereas previously she said she thought the questions were "intense," had "no purpose" and were "no one's business" – all showing she consciously decided not to answer – she now says she forgot. Now Juror Bennett claims that while filling out the questionnaire, "[she] was not thinking about the abuse [she] suffered as a child, because those are not memories [she] keep[s] at the forefront of [her] mind." (Ex. A to Return, C. Bennett Decl. ¶ 6.) Even though questions 64, 65, and 66 expressly asked whether she had "ever" been a witness or victim of a crime, she continues that she "did not think that those questions were asking about things that happened to [her] during [her] childhood. Instead, [she] believed the questions were asking about things that happened to [her] as an adult." She concludes, "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." (Ex. A to Return, C. Bennett ¶ 7.)

At the time Juror Bennett completed the pre-trial juror questionnaire, the years of abuse – that she now claims she either forgot or somehow did not realize applied – constituted nearly a third of her life. (CT Supp. I 2479; Ex. 123 to Petition, C. Bennett Decl., PE 1142 ¶ 9.)

VI. MEMORANDUM OF POINTS AND AUTHORITIES

The Court's Order to Show Cause ordered Respondent to show why relief prayed for should not be granted on the ground of juror misconduct. The misconduct claim is based on Juror Bennett's actions. The dispositive facts are not in dispute. Juror Bennett's supplemental declaration, filed with the Return, confirms them. They lead inescapably to the conclusions that Juror Bennett was actually and impliedly biased. Respondent's attempt to avoid this conclusion by claiming that Juror Bennett's untruthful answers were unintentional does nothing to dispel this conclusion, because (1) her intent does not matter and (2) her untruthfulness was intentional.

A. Legal Standard

Respondent concedes that "A criminal defendant has the right to a trial by an impartial jury under both the federal and state Constitutions." (Return at 3 (citing U.S. Const., 6th and 14th Amends.; Cal. Const., art. I, § 16; *Irvin v. Dowd* (1961) 366 U.S. 717, 721-22 [81 S.Ct. 1639, 6 L.Ed.2d 751]; *In re Hamilton* (1999) 20 Cal.4th 273, 293-294).)

Under both federal and California law, that right to impartiality extends to every juror, and violation requires reversal without regard to harmless-error review. "A defendant is entitled to be tried by 12, not 11, impartial and unprejudiced jurors. Because a defendant charged with a crime has a right to the unanimous verdict of 12 impartial jurors, it is settled that a conviction cannot stand if even a single juror has been improperly influenced." (*People v. Nesler* (1997) 16 Cal.4th 561, 577, citations and quotations omitted) (plurality opinion.) "Even if only one juror is unduly biased or prejudiced, the defendant is denied his constitutional right to an impartial jury." (*Tinsley v. Borg* (9th Cir. 1990) 895 F.2d 520, 523-24, quotations omitted.) "[A] biased adjudicator is one of the few structural trial defects that compel reversal without application of a harmless error standard." (*People v. Nesler, supra*, 16 Cal.4th at p. 579; *see also In re Carpenter* (1995) 9 Cal.4th 634, 654; *Dyer v. Calderon* (9th Cir. 1998) 151 F.3d 970, 973 n.2 [A biased juror "introduces a structural defect not subject to harmless error analysis," and the defect can only be remedied by vacating the verdict.].)

Voir dire is the mechanism to ferret out such bias. "Voir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored." (*In re Hitchings* (1993) 6 Cal.4th 97, 110, quotations omitted; *see also McDonough Power Equip. v. Greenwood* (1984) 464 U.S. 548, 554 ["*Voir dire* examination serves to protect that right [to a fair trial] by exposing possible biases, both

known and unknown, on the part of potential jurors"]. Emphasis in original.) "Demonstrated bias" may prompt a prospective juror to be excused for cause, while "hints of bias" may trigger peremptory challenges. (*McDonough*, 464 U.S. at p. 554; *In re Hitchings, supra*, 6 Cal.4th at p. 97.) "The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious." (*McDonough, supra*, 464 U.S. at p. 554.)

When a potential juror conceals material facts on voir dire, she denies a party that right, causing "the deprivation of an absolute and substantial right historically designed as one of the chief safeguards of a defendant against an unlawful conviction." (*People v. Diaz* (1984) 152 Cal.App.3d 926, 933.) Juror misconduct involving "[f]alsehood, *or* deliberate concealment or nondisclosure of facts and attitudes" on voir dire is particularly egregious because it "deprives both sides of the right to select an unbiased jury and erodes the basic integrity of the jury trial process." (*People v. Blackwell* (1987) 191 Cal.App.3d 925, 929, emphasis supplied.) Concealing bias on voir dire is a "direct violation of the oaths, duties and admonitions imposed on actual or prospective jurors," and it constitutes juror misconduct. (*In re Hamilton, supra*, 20 Cal.4th at p. 294.) Jury misconduct is especially problematic in capital cases, as the Eighth Amendment requires heightened reliability in the determination that death is the appropriate penalty. (*Beck v. Alabama* (1980) 447 U.S. 625, 638; *Woodson v. North Carolina* (1976) 428 U.S. 280, 305.)

Once a party has established that juror misconduct occurred, a presumption of prejudice arises that, unless rebutted, requires the verdict to be set aside. "It is well settled that a presumption of prejudice arises from any juror misconduct." (*People v. Honeycutt* (1977) 20 Cal.3d 150, 156, emphasis supplied.) The presumption of prejudice arising from juror misconduct is particularly strong in capital cases, which are subject to a heightened standard of reliability under the Eighth Amendment. (See

People v. Hogan (1982) 31 Cal.3d 815, 848; *In re Stankewitz, supra*, 40 Cal.3d at p. 403.)

The prosecution bears the burden of rebutting the presumption. (*People v. Marshall* (1990) 50 Cal.3d 907, 949-51.) The presumption of prejudice arising from juror misconduct "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." (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 417, emphasis supplied.) Respondent must prove "that no prejudice actually resulted" from Juror Bennett's misconduct. (*In re Stankewitz, supra*, 40 Cal.3d at p. 402 (citing *People v. Pierce* (1979) 24 Cal.3d 199, 207.)

In contrast to the prejudice inquiry that results from a juror's intentional concealment on voir dire, "if it appears substantially likely that a juror is actually biased, [the court] must set aside the verdict, no matter how convinced [it] might be that an unbiased jury would have reached the same verdict." (*In re Carpenter, supra*, 9 Cal.4th at p. 654; *Dyer v. Calderon, supra*, 151 F.3d at p. 973 n.2 ["The presence of a biased juror cannot be harmless; the error requires a new trial without a showing of actual prejudice."].)

Taken together, these principles dictate a new trial or reduced sentence for Manriquez for at least two reasons. First, because Juror Bennett committed misconduct by intentionally concealing her history of abuse and rape during voir dire, Respondent must prove there is no "reasonable probability" that Manriquez was actually harmed by Juror Bennett's concealment. Respondent cannot meet that burden. (Part B, *infra*). Second – regardless of whether Juror Bennett committed misconduct or Respondent rebuts the presumption – Juror Bennett's declarations establish that she was actually and impliedly biased. The

biased juror automatically invalidates the death verdict and entitles Manriquez to a new trial or reduction in sentence. (Part C, *infra*.)

Respondent's argument for avoiding Juror Bennett's misconduct rests entirely on the claim that her failure to answer the voir dire questions truthfully was not intentional. (Return at 5-9.) This claim is (a) not true and (b) legally beside the point given Juror Bennett's bias, as described below.

B. Juror Bennett's Concealment Was Intentional, And The State Offers No Evidence To Show A Lack of Prejudice

Juror Bennett intentionally concealed her history of abuse when answering unambiguous questions on voir dire. This creates a presumption of prejudice that the state cannot rebut.

Without dispute, intentional failure to answer voir dire questions truthfully constitutes misconduct that raises a presumption of prejudice. (Return at 6; *supra* at p. 11.) The facts demonstrate such an intentional failure occurred here. Juror Bennett was directly asked in several different ways whether she had "ever" been a victim of violence or a crime, even if the crime went unreported. Her shifting explanations for why she failed to disclose that she had been "raped" and "abuse[d]," coupled with the implausibility of her claim that she thought childhood abuse was outside the scope of questions asking whether she had "ever" been a victim, show her failure to disclose was intentional.

1. Juror Bennett's Failure To Disclose Her Childhood Abuse And Rape Was Intentional

Juror Bennett has provided two distinct and conflicting stories as to why she failed to disclose her past on voir dire. Despite clear instructions to truthfully and completely answer the questions in the questionnaire,

Juror Bennett intentionally limited the responses about her past, stating the questions "were intense" and "seemed to have no purpose." (Ex. 123 to Petition, Bennett Decl. at PE 1141 ¶4.) Contrary to court instruction, she consciously declined to answer the questions because "[s]uperficial questions about where you were brought up, or your education, or income should be no one's business." (*Ibid.*) This intentional failure to answer truthfully was misconduct. (*Supra* at p. 11.)

In her declaration in support of the Return, Juror Bennett changed her account of why she failed to disclose the information. Her new explanation – which suddenly claims that the failure to disclose was not intentional – conflicts with her previous explanation and with the plain wording of at least three different questions. She did not and cannot explain either discrepancy. Juror Bennett now claims she did not intentionally conceal the information about her past. Instead, she offers two seemingly contradictory explanations for the concealment. First she says she simply did not think of her abuse and rape when she was completing the questionnaire: "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." (Ex. A to Return, C. Bennett Decl. ¶ 6.) Second, she claims said she did not disclose the information because almost twenty years ago, she interpreted questions 63-66 to not relate to childhood events: "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." (*Id.* at ¶ 7.)

With respect, Juror Bennett's claim that she somehow forgot her horrific experiences when answering the questions is hard to credit. She had experienced rape and over a decade of repeated violence. These are traumatic events; one would not easily forget them. There is no claim that

she had psychologically repressed them, and in fact she concededly brought them to mind during jury deliberations. There is no apparent reason why she would have forgotten about such terrible events or failed to connect them with questions about a "violent act," "crime" or fear of "being hurt." (*People v. McPeters* (1992) 2 Cal.4th 1148, 1176 [noting that "is highly unlikely . . . nondisclosure [i]s inadvertent" when questions are specific and concealment is of "traumatic" event].) Her claim of a lapse in memory is especially untrustworthy because the questions related to traumatic events that spanned nearly a third of her lifetime. Indeed, Juror Bennett herself cannot sustain her "I forgot" story for failing to disclose her abusive history. In the same declaration, she provides a second inconsistent explanation. She says she failed to make the required disclosures, not because she simply forgot, but because she interpreted the questions and decided they only called for her to describe events in her adult life. But, even this alternative story cannot be trusted. Questions 64, 65 and 66 all asked if Juror Bennett had "ever" been a victim or witness to violence. "Ever" is not ambiguous. The questions were in writing and she had time to reflect. How could she – or any reasonable person – interpret a question whether something had "ever" happened as applying only to adulthood?

Rather, her original explanation is the only one that makes sense. She thought the questions were intrusive, they brought up painful memories that she thought were no one else's business, so she made a deliberate attempt to withhold the information. As understandable as that may be as a human reaction, it is an intentional failure to disclose and misconduct. *People v. Blackwell, supra*, 191 Cal.App.3d 925, is almost identical. In *Blackwell*, the defendant claimed she was a victim of domestic violence, triggered by her husband's alcoholism, and that she killed her husband in self-defense. (*Id.* at pp. 927-28.) One juror who had indicated no personal experience with such violence or alcoholism on voir dire admitted after the

verdict that she was the victim of an abusive former husband who became violent when drunk. (*Id.* at p. 928.) She also acknowledged that she had drawn on her own experiences in determining defendant's guilt: she declared, "'*Based upon my personal experiences, it is my opinion that* [followed by a description of Juror R.'s personal views on battered wives]'" (*Ibid.*, italics and alterations in original.) She then explained, "[s]ince I was personally able to get out of a similar situation without resorting to violence, I feel that if she had wanted to, [appellant] could have gotten out, as well." (*Ibid.*, alterations in original.)

Like Respondent here, the state in *Blackwell* argued that the concealment was unintentional and that no prejudicial misconduct occurred. The court rightfully disagreed, explaining that "[i]f the voir dire questioning is sufficiently specific to elicit the information which is not disclosed, or as to which a false answer is later shown to have been given, the defendant has established a prima facie case of concealment or deception." (*Ibid.*; *see also Id.* at p. 930 (if "the question propounded to the juror was (1) relevant to the voir dire examination; (2) [] unambiguous; and (3) [] the juror had substantial knowledge of the information sought to be elicited . . . the court should then determine if prejudice to the defendant in selecting the jury reasonably could be inferred from the juror's failure to respond." Quotation marks and citations omitted.) Finding that the "voir dire questions . . . were sufficiently specific and free from ambiguity so that the only inference or finding which [could] be supported [was] that Juror R. was aware of the information sought and deliberately concealed it by giving false answers," and that the information was patently relevant (thus raising a presumption of prejudice), the court then held that the misconduct was prejudicial since the record contained no affirmative evidentiary showing that prejudice did not exist. (*Id.* at pp. 930-31.)

The record and Respondent's arguments in this case are

indistinguishable from those in *Blackwell*. In this case, the questions in the pre-trial questionnaire were unambiguous; they were clearly written and asked if prospective jurors had "ever" been a victim or witness to violence or had "ever" been afraid of being harmed by violence. Such questions did not demark limitations to childhood or adulthood. It was quite plain that they were open to any and all aspects of the prospective jurors' lives. (*Supra* at pp. 5-6.) Moreover, the questions were clearly relevant to exploring any potential juror bias. Thus, *Blackwell* compels a finding that Juror Bennett's deliberate failure to truthfully answer unambiguous voir dire questions constitutes juror misconduct warranting a presumption of prejudice.

2. Juror Bennett's Failure to Volunteer Her History Upon Learning of Petitioner's Abused Childhood And Rape Confirms Her Intent To Conceal Her Almost Identical History

Juror Bennett's misconduct continued through the trial. Intentional concealment constituting misconduct may occur outside the period of voir dire. Jurors are expected to come forward and disclose any potential for bias at any point throughout the trial. (*See People v. Thomas* (1990) 218 Cal.App.3d 1477, 1482, 1484-85 [affirming dismissal of a juror during the deliberations period where the court received notice that a juror was biased].) Here, Juror Bennett continued to make conscious decisions to conceal her untruthful voir dire answers even after she saw how her history of abuse of rape paralleled Manriquez's life; remarkably, at the same time, she was disclosing them during deliberations in an attempt to influence other jurors. (*Cf. People v. Jackson* (1985) 168 Cal.App.3d 700 [no presumption of prejudice where juror in drug possession case came forward during deliberations and disclosed that his nephew died from a drug overdose, which he had only "just remembered"]; *People v. McPeters*

(1992) 2 Cal.4th at pp. 1174-75 [finding juror to be impartial where he candidly disclosed that he had minor professional dealings with the victim's husband as soon as he realized the connection and before trial began].)

Whatever Juror Bennett's state of mind before the trial began, once she saw the similarities of her experience and Petitioner's, she could not have been unaware of the potential of bias and her obligation to notify the court. From this, the only conclusion is that her decision to continue concealing her personal history from the court was calculated and intentional. This is juror misconduct, plain and simple.

3. Respondent Has Not Rebutted The Presumption Of Prejudice

Juror Bennett's misconduct raises a presumption of prejudice. (*In re Hitchings, supra*, 6 Cal.4th at p. 119; *see also In re Stankewitz*, *supra*, 40 Cal.3d at p. 402; *People v. Pierce, supra*, 24 Cal.3d at p. 207; *People v. Honeycutt* (1977) 20 Cal.3d 150, 156.) This presumption is even stronger here because a man's life is at stake. (*In re Stankewitz*, 40 Cal.3d at p. 402.) To rebut this presumption, Respondent must prove that there is no "reasonable probability" that Manriquez was actually harmed by Juror Bennett's misconduct. (*In re Hitchings, supra*, 6 Cal.4th at p. 119; *In re Stankewitz*, 40 Cal. 3d at p. 402 [citing *People v. Pierce*, 24 Cal.3d at p. 207].)

Respondent has not rebutted the presumption of prejudice arising from Juror Bennett's misconduct, nor can he. Juror Bennett's misconduct establishes far more than a reasonable probability that the jury was impermissibly influenced to Petitioner's detriment.

A presumption of prejudice is not rebutted where a juror's intentional concealment relates to shared experiences between the juror and defendant, those experiences influenced the juror's vote, and the issues were relevant to the case at hand. (*Blackwell, supra*, 191 Cal. App. 3d at p.

931.) Here, Juror Bennett admits that her concealed history of childhood abuse and rape affected her view of Manriquez. (*See* p. 24, *infra*.) Indeed, she concealed an actual bias towards Manriquez. (*See* pp. 23-26, *infra*.) She also admits she "freely shared" her rape and childhood abuse "during the penalty phase deliberations after Manriquez offered evidence of his own abusive childhood as mitigating circumstances" (Ex. A to Return ¶ 10) in order to persuade the other jurors that "childhood abuse was not an excuse." (Ex. 123 to Petition, PE 1142 ¶ 9.) Her admitted attempt to influence their votes shows that her concealed history influenced her own vote. Moreover, her role as the jury foreperson and the timing of her attempts to influence the other jurors makes it more likely that she was successful in affecting their votes.

Had Juror Bennett answered the pre-trial questionnaire truthfully, or come forward during the penalty phase once her memory was refreshed, she would have been removed from the jury, and the jury would have been instructed to disregard her comments. By concealing her bias, she deprived the court its opportunity to cure the defect before the verdict was reached, thus confirming that Manriquez was prejudiced as a result. *(See People v. Holloway, supra*, 50 Cal.3d at 1112 [noting that although the "conclusion might [be] different had the misconduct been revealed in time for the court to have taken corrective steps to cure it through admonition or by other prophylactic measures," the presumption of prejudice was not rebutted where juror's misconduct in reading newspaper article about case was discovered *after* guilty verdict], overruled on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1; *see also People v. Daniels* (1991) 52 Cal.3d 815, 864 (likelihood of the prosecution rebutting the presumption of prejudice is "far less when the offending juror remains on the jury and participates in the verdict than when the juror is promptly removed"); *cf. People v. Tafoya* (2007) 42 Cal.4th 147, 193 [finding juror

misconduct but no prejudice where trial court removed juror from the jury, admonished the remaining jurors to disregard the juror's improper comments, and the remaining jurors agreed to heed the court's instructions].)

As a result of Juror Bennett's misconduct, Manriquez suffered harm; he was denied a fair trial before an impartial jury and is therefore entitled to relief. (*Supra* at p. 10.)

C. Even If Her Untruthfulness Was Unintentional, The Undisputed Facts Establish Juror Bennett Was Biased

Even if Juror Bennett's failure to disclose her history of abuse and rape had been an unintentional mistake, it would still require a new trial because the facts she failed to disclose demonstrate bias. Both the United States and California Constitutions require an impartial jury. (*Supra* at p. 10.) When a juror is biased, as here, both federal and California law require a verdict to be vacated.

As Respondent admits, where the juror's failure to disclose is unintentional, "juror misconduct may still be found where bias is clearly apparent from the record." (*People v. San Nicolas* (2004) 34 Cal.4th 614, 646, emphasis supplied; *accord, In re Hamilton* (1999) 20 Cal.4th 273, 300 [Even in cases of honest mistakes on voir dire, reversal is required where there is "proof that the juror's wrong or incomplete answer hid the ***juror's actual bias***." Emphasis supplied.]; *People v. Diaz, supra*, 152 Cal.App.3d at p. 932 ["there are instances where *unintentional* juror concealment of material information constitute[s] misconduct."]; Return at 7.) That is this case. The record demonstrates Juror Bennett's bias, actual and implied, towards Manriquez.

Implied bias includes "the existence of a state of mind in the juror evincing . . . bias towards, either party[.]" (*People v. Thompson* (2010) 29

Cal.4th 79, 575 [adopting and quoting Cal. Code Civ. Proc. § 229(f)]). Numerous cases both in and outside California have recognized that implied bias exists when a juror's personal experiences are as similar to the material conduct being alleged at trial as they are in this case. (*People v. Diaz, supra*, 152 Cal.App.3d at 938-39 [holding the trial court abused its discretion in refusing to discharge the jury foreperson when the court learned that she failed to disclose she had been the victim of an attempted rape at knifepoint in a case where defendant was charged with committing assault with a knife]; *see also People v. Blackwell, supra*, 191 Cal.App.3d at p. 931 [indicating shared experiences constitute bias].

As the federal courts put it, implied bias exists when "the relationship between a prospective juror and some aspect of the litigation is such that it is highly unlikely that the average person could remain impartial in his deliberations under the circumstances," and this test is met when emotional parallels between the juror's life experience and the facts of the case make it unlikely that the juror could remain impartial. *United States v. Gonzalez* (9th Cir. 2000) 214 F.3d 1109, 1114 (quoting *Tinsley v. Borg* (9th Cir. 1990) 895 F.2d 520, 527 [in turn quoting *Person v. Miller* (4th Cir. 1988) 854 F.2d 656, 664]). *See, e.g., Gonzalez,* 214 F.3d at 1114 [juror could not be impartial in cocaine distribution case given that her ex-husband used cocaine and such drug abuse lead to her divorce]; *United States v. Eubanks* (9th Cir. 1979) 591 F.2d 513, 516 [juror was presumptively biased in case where defendant was charged with conspiracy to possess and distribute heroin because juror had two sons who were in prison for murder and robbery committed in an attempt to obtain heroin]; *Dyer v. Calderon* (9th Cir. 1998) 151 F.3d 970, 981 [reversing conviction on grounds of implied bias where juror failed to disclose that (i) her brother had been killed in a manner similar to the way the defendant was accused of killing his victims, and (ii) that her husband was jailed, when questioned

about whether any of her relatives had ever been the victim of a crime or accused of any offense: "Because the implied bias standard is essentially an objective one, a court will, where the objective facts require a determination of such bias, hold that a juror must be recused even where the juror affirmatively asserts [or even believes] that he or she can and will be impartial."]; *Burton v. Johnson* (10th Cir.1991) 948 F.2d 1150, 1159 [juror in abusive family situation was presumptively biased in murder trial where defendant's defense was battered wife syndrome because of the "similarities of the[ir] experiences"]; *Jackson v. United States* (D.C. Cir. 1968) 395 F.2d 615 [juror was presumed to be biased because he had been in a love triangle similar to the one involved in the case at issue]; *United States v. Allsup* (9th Cir. 1977) 566 F.2d 68, 71 [jurors were found to be biased because of their banking ties and robbery experience in cases involving bank robberies]; *United States v. McCorkle* (3d Cir. 1957) 248 F.2d 1, *cert. den.* 355 U.S. 873, *rehg. den.*, (1957) 355 U.S. 908 [juror who had recently been robbed should have been excused from jury in robbery case, as were jurors who worked in banks].

That is this case. Juror Bennett's own history of abuse and rape were so similar to Petitioner's mitigation evidence that it is highly unlikely that the average person in her position would put them aside. The similarities are striking. Manriquez's mitigation case presented evidence of the harsh slave-like labor conditions he endured as a child and young teen working on his family's rural farm and the beatings and abuse inflicted by his father and grandmother. (Pet. 219 ¶ 542.) Juror Bennett concealed information about having been used for slave labor starting at the age of five through her teenage years on the farm where she was raised by her foster mother and suffered regular beatings. (Res. 72.) The prosecution presented aggravating evidence that the Petitioner raped a woman. (Pet. 219-20 ¶ 543.) Juror Bennett had been raped while living on the farm but

did not disclose this in voir dire. (Res. 72.)

These very specific and material parallels constitute implied bias. As *Diaz* explained when faced with a juror who concealed personal experiences similar to the conduct being alleged at trial: "In light of the surrounding circumstances here, highlighted by the inevitable subliminal ramifications upon a juror's ability to fairly and objectively judge a person accused of committing the same type of violent physical assault to which the juror has been subjected, we conclude the trial court abused its discretion in not discharging [the juror]. The probability of bias is substantial when a juror has been victimized by the same type of crime." (*People v. Diaz*, 152 Cal.App.3d at p. 939.) Like the biased jurors in *Diaz*, *Blackwell*, *Gonzalez*, *Calderon* and other cases cited above, Juror Bennett's bias must be presumed because "the relationship between a prospective juror and some aspect of the litigation is such that it is highly unlikely that the average person could remain impartial in his deliberations under the circumstances." (*United States v. Gonzalez*, *supra*, 214 F.3d at p. 1114, quoting *Tinsley v. Borg, supra*, 895 F.2d at p. 527.)

Juror Bennett was also actually biased. Actual bias is "'the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.'" (*People v. Nesler, supra*, 16 Cal.4th at p. 581, adopting and quoting Cal. Code Civ. Proc. § 225 sub. (b)(1).) A juror is actually biased if, among other things, she is "unable to put aside [her] impressions or opinions based upon the extrajudicial information [she] received and to render a verdict based solely upon the evidence received at trial." *People v. Jenkins* (2000) 22 Cal.4th 900, 1049 (quoting *Nesler*, 16 Cal.4th at 582); *see also Nesler, supra*, 16 Cal.4th at p. 580 (quoting cases under federal law); *People v. Cissna* (2010) 182 Cal.App.4th 1105, 1118 (quoting *Nesler*). Actual bias

can arise at any time during trial: "'If at any time during the trial the juror loses the ability to render a fair and unbiased verdict, [s]he can, under [former] section 1123 of the Penal Code, be dismissed from the case.'" (*People v. Thomas* (1990) 218 Cal.App.3d 1477, 1484-85, quoting *People v. Farris* (1977) 66 Cal.App.3d 376, 386, first alteration supplied.)

That, too, is this case. Juror Bennett's statements demonstrate that she could not and did not put aside her "opinions based upon the extrajudicial information" – her beliefs based on her own history of abuse – and decide "based solely upon the evidence received at trial." To the contrary, she rejected Manriquez's mitigation evidence *explicitly because of* her opinions based on her own abuse and rape. She swore that "*Having been through abuse myself*, I do not view abuse as an excuse. I told the other jurors about *my experience* and my *belief* that childhood abuse was not an excuse." (Ex. 123 to Petition, C. Bennett Decl., PE 1142 ¶ 9.) (emphasis supplied). Her history of having been "beat, [sic] raped, [and] used for slave labor from the age of 5 thru [sic] 17," but turning out as a "law abiding citizen" led her to conclude that "It is a matter of choice!" (Ex. 24 to Petition, Post-Verdict Questionnaire of Constance Bennett, PE 0234.) She explained her past to other jurors "*to explain [her] belief* that the defendant made a lot of bad choices even though he *did not have to do so just because of his past.*" (Ex. A to Return, C. Bennett Decl. ¶ 12.) (emphasis supplied). Far from putting aside her impressions and opinions based on outside information and deciding based solely on the evidence received at trial, Juror Bennett *used* her impressions and opinions based on outside information to *rebut* the evidence received at trial, both in her own mind and in her discussions with other jurors. That is actual bias.

People v. Nesler, supra, 16 Cal.4th 561 held that a new trial was required in an almost identical situation. There, the plurality held that the juror's reference to extraneous information constituted misconduct because

such disclosures "were made during deliberations, at a time when she disagreed with other jurors, in an apparent attempt to persuade them to change their views." (*Id.* at pp. 579, 587-89.) The plurality found that the juror's use of the information during deliberations "demonstrated that she was unable to put aside the impressions and opinions formed from her consideration of the extraneous information, and to decide the matter based solely upon the evidence presented at trial." (*Id.* at p. 589). Accordingly, the plurality found that there was "a substantial likelihood that [the juror] was actually biased." (*Ib.*) A fourth Justice, concurring in the judgment and forming a majority, agreed that the juror was "actually biased" if she "was herself influenced" by the extraneous information – as Juror Bennett concededly was here. (*Id.* at pp. 592-93) (Mosk, J., concurring in judgment).

Like the juror in Nesler, who could not set aside the impressions formed as a result of extraneous information and consider matters impartially, and who shared those impressions with the other jurors in an effort to persuade them of her views, Juror Bennett also could not set aside her history of abuse and rape and used it to try to influence the other jurors. Specifically, she relied on her past "to explain [her] belief that the defendant made a lot of bad choices even though he did not have to do so just because of his past," (*supra* at p. 7), and did so at a strategic time, "during the penalty phase deliberations after the defendant offered evidence of his own abusive childhood as mitigating circumstances." (*Supra* at p. 7.) Thus, like the juror in Nesler, the timing and manner of the disclosure confirm that Juror Bennett's history of abuse and rape caused her to be actually biased towards Manriquez.

Respondent's only other argument against Juror Bennett's bias besides a lack of intention, which was addressed above, is that Juror Bennett could not be biased because she says so. (Return at 8-9.) This

argument fails for two reasons. First, Juror Bennett's statement is inadmissible under California Evidence Code section 1150. (*Supra* at p. 3.) Second, the argument fails because it is a self-serving statement made nearly twenty years after-the-fact, and is contradicted by her other statements and the weight of the evidence. (*See People v. Duarte* (2000) 24 Cal.4th 603, 611 ["[A] self-serving statement lacks trustworthiness . . . ."], quotation marks and citation omitted; *People v. Thomas*, *supra*, 218 Cal.App.3d at pp. 1482-85 [juror's denial that she was biased against police officers insufficient to show lack of bias where other jurors corroborated that juror was making biased remarks during deliberations]; *People v. Farris* (1977) 66 Cal.App.3d 376, 386 n.5 ["[E]ven though a juror may claim he can be impartial, he can still be properly excluded from the case if there are so many factors weighing against this possibility, that neither he, nor any other person similarly situated, could render a fair and unbiased decision."]; *United States v. Allsup, supra*, 566 F.2d at p. 71 ["Bias can be revealed by a juror's express admission of that fact, but, more frequently, jurors are reluctant to admit actual bias, and the reality of their biased attitudes must be revealed by circumstantial evidence."); *Gonzalez, supra*, 214 F.3d at 1112 ["[M]ore frequently, jurors are reluctant to admit actual bias, and the reality of their biased attitudes must be revealed by circumstantial evidence." Quotations omitted.].)

Here, Juror Bennett's admissions about her history and mindset confirm her bias, (*supra* at pp. 6-8), and those facts cannot be set aside merely because she now claims she was not biased. As a lay person, Juror Bennett is unlikely to even understand the legal significance of "bias," and indeed, jurors are often unaware of their own bias or reluctant to admit it. (*People v. Diaz, supra*, 152 Cal.App.3d at p. 938.)

Juror Bennett's concealed bias deprived Manriquez of his right to a fair and impartial jury. Because "the presence of a biased juror cannot be

harmless," (*People v. Carter* (2005) 36 Cal.4th 1114, 1208, quoting *Dyer v. Calderon, supra*, 151 F.3d at p. 973, fn. 2), "if it appears substantially likely that a juror is actually biased, [the court] must set aside the verdict, no matter how convinced [it] might be that an unbiased jury would have reached the same verdict." (*In re Carpenter*, *supra*, 9 Cal.4th at p. 654) Because Juror Bennett was biased against Manriquez, Manriquez is entitled to relief without engaging in a prejudice inquiry. Nonetheless, as described above, the record clearly establishes Manriquez was prejudiced by Juror Bennett's misconduct.

D. Manriquez Is Entitled To A New Guilt And/Or Penalty Trial- Or A Reduction In Penalty From Death To Life Without Possibility Of Parole In Lieu Of Ordering A New Penalty Trial

The evidence overwhelmingly shows that Juror Bennett was biased against Manriquez. Where juror bias is "not known to the accused until after the trial and verdict" the appropriate remedy is for the court "to grant to the accused a new trial." (*Williams v. Bridges* (1934) 140 Cal.App. 537, 543 (1934); *see also People v. Nesler, supra*, 16 Cal.4th at p. 577 [a "biased adjudicator is one of the few structural trial defects"].)

Alternatively, and at the very least, Petitioner's death sentence must be reduced to life without possibility of parole. This Court may command such a sentence without ordering a new penalty trial. California Penal Code section 1181, subdivision (7) states: "When the verdict or finding is contrary to law or evidence, but in any case wherein authority is vested by statute in the trial court or jury to recommend or determine as a part of its verdict or finding the punishment to be imposed, the court may modify such verdict or finding by imposing the lesser punishment without granting or ordering a new trial, and this power shall extend to any court to which the case may be appealed." This makes "clear that the court may reduce the

punishment in lieu of ordering a new trial, when there is error relating to the punishment imposed." (*People v. Odle* (1951) 37 Cal.2d 52, 58-59.)

The Court should exercise its discretion under section 1181, subdivision (7) in this case. It has been almost twenty years since the first trial in this case and it would be difficult, if not impossible, for both parties to gather relevant witnesses for a new trial. Reducing the sentence would also serve the interests of judicial economy by avoiding the expense and delay of a new trial. The Court should order that Manriquez's death sentence be reduced to life in prison without possibility of parole; it need not order a new trial. Finally, in the event the Court does not reduce Petitioner's sentence, Manriquez is entitled at the very least to a new penalty phase trial.

VII. MANRIQUEZ IS ENTITLED TO A GRANT OF RELIEF BASED UPON THE PLEADINGS WITHOUT AN EVIDENTIARY HEARING

This Court expressed its "disapproval of the practice of filing returns that merely contain a general denial of a habeas corpus petitioner's factual allegations." (*People v. Duvall, supra*, 9 Cal.4th at pp. 480-81.) As the Court noted in *Duvall*, a return must "indicate the factual basis on which the People reach th[e] conclusion" that the petitioner is not entitled to relief. (*Id.* at p. 481, emphasis in original.). The return must "'recite the facts upon which the denial of petitioner's allegations is based, and, where appropriate, should provide such documentary evidence, affidavits, or other materials as will enable the court to determine which issues are truly disputed.'" (*Id.* at p. 480, quoting *In re Lewallen* (1979) 23 Cal.3d 274, 278, fn. 2, emphasis omitted.)

Respondent's Return attempts to allege only two facts: (1) that Juror Bennett's concealment of her highly relevant and material history of abuse and rape was not intentional, and that (2) Juror Bennett was not biased. A

hearing is not required to determine either fact.

First, a hearing is not required to evaluate Juror Bennett's motives when concealing her history of abuse. As described above, her most recent declaration should not be given any weight when measured against the clarity of the voir dire questions, and her inconsistent and ever-changing explanations of why she never informed the court of her concealment before or during the trial. Given how much time has passed since her concealment, and in light of the various explanations she has already given, an evidentiary hearing is unlikely to provide any more insight into her motives.

Second, and most importantly, Respondent has alleged no admissible facts to prove that Juror Bennett was not actually biased and that there was no prejudice. Juror Bennett's self-serving and conclusory statement that she was not biased is inadmissible under California Evidence Code section 1150. Moreover, it is contradicted by her admissions demonstrating her actual bias against Petitioner.

Juror Bennett has completed two questionnaires and submitted two declarations - she has nothing more to contribute. An evidentiary hearing is unlikely to shed any more light on why she concealed her history almost twenty years ago.

Manriquez should thus be granted relief on the pleadings.

VIII. PRAYER

WHEREFORE, Manriquez respectfully prays that this court:

1. Grant Manriquez relief on these pleadings;

2. Conduct an evidentiary hearing in the event the Court determines that relief will not be granted in Manriquez's favor on these pleadings;

3. Grant Manriquez discovery and the right to avail himself of the formal subpoena power of this Court for witnesses and documents not otherwise obtainable;

4. After full consideration of the issues raised, vacate the sentence of death imposed in *People v. Abelino Manriquez*, California Supreme Court Case No. S038073, and grant Manriquez a new trial;

5. Grant Manriquez such further relief as is appropriate and just in the interests of justice.

DATED: December 6, 2012 BINGHAM MCCUTCHEN LLP

By: /s/ John R. Reese

John R. Reese
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Robert A. Brundage
Elisa M. Cervantes
Nitin Jindal
Attorneys for Petitioner
Abelino Manriquez

CERTIFICATE OF COMPLIANCE

I certify that the attached Traverse to the Return uses a 13-point Times New Roman font, and contains 9,228 words.

By: /s/ John R. Reese
John R. Reese
Bingham McCutchen, LLP
Attorneys for Petitioner
Abelino Manriquez

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of San Francisco, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service and correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

Today I served the attached:

PETITIONER MANRIQUEZ'S TRAVERSE TO THE RETURN

by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California, in a sealed envelope(s) with postage prepaid, addressed as follows:

California Appellate Project
101 Second Street, Suite 600
San Francisco, CA 94105

John A. Clarke
Clerk of the Court
Los Angeles County Superior Court
111 No. Hill Street
Los Angeles, CA 90012

Office of the State Public Defender
221 Main Street, 10th Floor
San Francisco, CA 94105-1925

Habeas Corpus Resource Center
50 Fremont Street, Suite 1800
San Francisco, CA 94105

Kamala D. Harris
Attorney General of California
Dane R. Gillette
Chief Assistant Attorney General
Lance E. Winters
Senior Assistant Attorney General
Jamie L. Fuster
Deputy Attorney General
Timothy M. Weiner
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on December 6, 2012.

Jennifer Hernandez

In re Abelino Manriquez
In The Supreme Court of the State of California, Case No. S141210

AMENDED PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of San Francisco, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service and correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

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Abelino Manriquez
CDC No. J12400
San Quentin State Prison
1 Main Street
San Quentin, CA 94964

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on December 6, 2012.

Jennifer Hernandez