

No. S266305

**In the Supreme Court of the State of California**

---

THE PEOPLE OF THE STATE OF CALIFORNIA,  
*Plaintiff and Respondent,*

v.

JOSE DE JESUS DELGADILLO,  
*Defendant and Appellant.*

---

Second Appellate District, Case No. B304441  
Los Angeles County Superior Court, Case No. BA436900  
The Honorable Katherine Mader, Judge

---

**RESPONDENT'S SUPPLEMENTAL BRIEF**

---

ROB BONTA (SBN 202668)  
*Attorney General of California*  
MICHAEL J. MONGAN (SBN 250374)  
*Solicitor General*  
LANCE E. WINTERS (SBN 162357)  
*Chief Assistant Attorney General*

JANILL L. RICHARDS (SBN 173817)  
*Principal Deputy Solicitor General*  
CHARLES RAGLAND (SBN 204928)  
*Senior Assistant Attorney General*  
\*SAMUEL P. SIEGEL (SBN 294404)  
*Deputy Solicitor General*  
LYNNE G. MCGINNIS (SBN 101090)  
*Deputy Attorney General*  
  
455 Golden Gate Ave., Ste. 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 510-3917  
Sam.Siegel@doj.ca.gov  
*Attorneys for the People of the State of  
California*

September 23, 2022

The People respectfully submit this supplemental brief pursuant to California Rules of Court, rule 8.520(d). In their Answer Brief on the Merits, filed September 8, 2021, the People explained why there is no legal basis for requiring *Wende* procedures—including independent judicial review of the entire record—on receipt of appointed counsel’s “no-issue” brief in an appeal from an order denying a petition for postconviction relief. (ABM 30-56.) After the People’s brief was filed, the Legislature substantively amended the statute under which Appellant sought relief, former Penal Code section 1170.95, and, thereafter, renumbered the provision to section 1172.6.<sup>1</sup> As discussed below, the amendments do not affect the outcome of this case.

In 2021, the Legislature adopted Senate Bill 775 (Reg. Sess. 2021-2022), which the Governor signed on October 5, 2021. (See Stats. 2021, ch. 551, § 2.) That bill took effect on January 1, 2022, and made several substantive changes to former section 1170.95, renumbered to section 1172.6. Section 1172.6 now provides that:

- Once a trial court receives a petition “in which the information required by [section 1172.6, subdivision (b)] is

---

<sup>1</sup> All further statutory references in this brief are to the Penal Code. Earlier this year, the Legislature adopted Assembly Bill 200 (Reg. Sess. 2021-2022), which renumbered section 1170.95 as section 1172.6. (See Stats. 2022, ch. 58, § 10.) The Governor signed that bill on June 30, 2022, and it took effect immediately. (See *id.* § 47.) Other than renumbering the provision, Assembly Bill 200 did not change the text of former section 1170.95. (See *People v. Strong* (2022) 13 Cal.5th 698, 708, fn. 2.)

set forth,” or a petition “where any missing information can readily be ascertained by the court,” the court “shall appoint counsel to represent the petitioner” if the petitioner has requested counsel. (§ 1172.6, subd. (b)(3).) This amendment codified this Court’s decision in *People v. Lewis* (2021) 11 Cal.5th 952, 961-970. (See Stats. 2021, ch. 551, § 1, subd. (b).) Section 1172.6(b) directs petitioners seeking relief under section 1172.6 to submit declarations stating that they are “eligible for relief under” the statute, and to provide the superior court case number and year of their convictions.

- A trial court that receives a petition that meets the requirements of section 1172.6(b) “shall hold a hearing to determine whether the petitioner has made a prima facie case for relief” after the parties have submitted briefing on that issue. (§ 1172.6, subd. (c).)
- A trial court that declines to issue an order to show cause after determining that the petitioner has not made a prima facie case for relief “shall provide a statement fully setting forth its reasons for doing so.” (§ 1172.6, subd. (c).)
- Once an order to show cause has been issued, a “finding that there is substantial evidence to support a conviction for murder, attempted murder, or manslaughter is insufficient to provide, beyond a reasonable doubt, that the petitioner is ineligible for resentencing.” (§ 1172.6, subd. (d)(3).)

These amendments, which address the appropriate procedures for resolving petitions filed under section 1172.6 by the *trial court*, do not speak to the procedures that are required when counsel determines that an *appeal* from an order denying postconviction relief lacks arguable merit. (See ABM 30-56 [explaining why *Wende* does not apply in this context]; ABM 56-65 [detailing procedures that the Court may prescribe in this context under its inherent authority to declare rules of appellate procedure.] Nor do they suggest that the procedures followed by the Court of Appeal in this case were constitutionally infirm.

Respectfully submitted,

ROB BONTA

*Attorney General of California*

MICHAEL J. MONGAN

*Solicitor General*

LANCE E. WINTERS

*Chief Assistant Attorney General*

JANILL L. RICHARDS

*Principal Deputy Solicitor General*

CHARLES RAGLAND

*Senior Assistant Attorney General*

*/s/ Samuel P. Siegel*

SAMUEL P. SIEGEL

*Deputy Solicitor General*

LYNNE G. MCGINNIS

*Deputy Attorney General*

*Attorneys for the People of the State of California*

September 23, 2022

**CERTIFICATE OF COMPLIANCE**

I certify that the attached RESPONDENT'S ANSWER BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 585 words.

ROB BONTA

*Attorney General of California*

*/s/ Samuel P. Siegel*

SAMUEL P. SIEGEL

*Deputy Solicitor General*

*Attorneys for the People of the State of California*

September 23, 2022

**DECLARATION OF ELECTRONIC SERVICE**

Case Name:       **People v. Delgadillo, Jose de Jesus**  
                          **(California Supreme Court)**  
Case No.:         **S266305**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Participants who are registered with TrueFiling will be served electronically.

On **September 23, 2022**, I electronically served all parties in the case with the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by transmitting a true copy via this Court's TrueFiling system.

Eric R. Larson  
330 J Street, # 609  
San Diego, CA 92101  
(619) 238-5575  
Larson1001@yahoo.com  
**Served via TrueFiling**

Los Angeles County  
District Attorney's Office  
211 West Temple Street, Suite 1200  
Los Angeles, CA 90012  
(415) 512-4000  
Truefiling@da.lacounty.gov  
**Served via TrueFiling**

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 23, 2022, at San Francisco, California.

Samuel P. Siegel  
Declarant

/s/ Samuel P. Siegel  
Signature

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **PEOPLE v.  
DELGADILLO**

Case Number: **S266305**

Lower Court Case Number: **B304441**

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

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	People v. Delgadillo, No. S266305 - Respondent's Supplemental Brief FOR FILING

Service Recipients:

Person Served	Email Address	Type	Date / Time
Nancy King Attorney at Law 163477	njking51@gmail.com	e-Serve	9/23/2022 10:36:51 AM
Eric Larson Attorney at Law 185750	Larson1001@yahoo.com	e-Serve	9/23/2022 10:36:51 AM
Richard Lennon California Appellate Project 73556	Rick@lacap.com	e-Serve	9/23/2022 10:36:51 AM
Attorney Attorney General - Los Angeles Office Court Added 247037	dana.ali@doj.ca.gov	e-Serve	9/23/2022 10:36:51 AM
Samuel Siegel Office of the Attorney General 294404	Sam.Siegel@doj.ca.gov	e-Serve	9/23/2022 10:36:51 AM
Los Angeles County District Attorney's Office	Truefiling@da.lacounty.gov	e-Serve	9/23/2022 10:36:51 AM

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

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

9/23/2022

Date

/s/Samuel P. Siegel

Signature

Siegel, Samuel P. (294404)

---

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General

---

Law Firm