

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

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

JUVENTINO ESPINOZA,

Defendant and Appellant.

APPELLANT'S REPLY BRIEF

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

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INTRODUCTION

In his opening brief on the merits, Mr. Espinoza argued that the Court of Appeal erroneously applied this Court's decision in *People v. Vivar* (2021) 11 Cal.5th 510 (*Vivar*) to find that he failed to make a sufficient showing of prejudicial error under Penal Code section 1473.7. Despite the unrebutted evidence of Mr. Espinoza's extensive ties to the United States, the Court of Appeal distinguished *Vivar* and found a lack of prejudice by focusing on the absence of contemporaneous statements on the record, notes or correspondence with his attorney to support his claim that immigration was a paramount concern. In doing so, the Court of Appeal erroneously treated the contemporaneous statements present in *Vivar* as a prerequisite to relief under Penal Code section 1473.7 rather than as one possible factor tending to demonstrate prejudicial error.

Respondent now concedes that Mr. Espinoza introduced evidence in support of his motion sufficient to establish prejudice under section 1473.7. Based on this position, Respondent suggests that this Court should either reverse the judgment of the Court of Appeal or vacate the judgment and remand to allow Mr. Espinoza an opportunity to supplement his evidentiary submission. Mr. Espinoza respectfully submits that this Court should reverse the Court of Appeal's decision and issue an opinion clarifying that a showing of prejudice is a case-specific inquiry based on the totality of the circumstances and not on the presence or absence of individual items of evidence.

ARGUMENT

I. THE COURT SHOULD REVERSE THE COURT OF APPEAL'S DENIAL OF THE MOTION AND REMAND TO THE SUPERIOR COURT WITH INSTRUCTIONS TO GRANT HIS MOTION

Respondent concedes that the evidence introduced in support of Mr. Espinoza's motion to vacate his conviction is sufficient to establish prejudice under section 1473.7.¹ (ABM 26.) In support of its position, Respondent points to evidence that Mr. Espinoza has deep and lifelong ties to the United States. (ABM 25-26.) He has lived in the United States since he arrived in this country in 1981, when he was 13 years old. (CT 172.) He became a Lawful Permanent Resident in 1986. (CT 146, 172.) At the time of his plea, Mr. Espinoza was not informed by his attorney that entering pleas to the charges would result in his deportation, exclusion from admission to the United States and denial of naturalization. (CT 172, 175.) Instead, his attorney's assistant told him that everything would be fine if he pled no contest. (CT 173, 175.)

At the time of the plea, Mr. Espinoza's greatest concern was being separated from his children and family. (CT 173.) Had he known of the serious immigration consequences of the plea, he would not have accepted the government's offer and would have taken the case to trial if necessary. (CT 172; 175.)

¹ All future references to statutes will be to the Penal Code unless otherwise stated.

Had he understood that his plea would lead to removal from his family in the United States, he “would have made a different choice and even ‘agreed to a longer jail sentence.’” (CT 173.)

Mr. Espinoza presented contemporaneous evidence supporting his statement that he would have rejected the plea bargain. At the time of his plea in 2003, he had spent 23 years building a life in the United States. He had owned a home with his wife for 10 years and had five children who, along with his wife, are United States citizens. (CT 70, 172.) Mr. Espinoza’s parents and eight siblings are either Lawful Permanent Residents or United States citizens. (CT 172.) As Respondent states, “Espinoza’s strong and enduring ties to the United States are undisputed.” (ABM 27.)

Mr. Espinoza’s important ties to the United States, as well as the other circumstances surrounding his plea and sentence, establish that the immigration consequences of his plea would have been of paramount importance to him had he known of them within the meaning of Penal Code section 1473.7 and this Court’s holding in *Vivar*. Therefore, Mr. Espinoza respectfully requests that the Court reverse the judgment of the Court of Appeal as suggested by Respondent and asks this Court to remand the matter to the Superior Court with instructions to grant Mr. Espinoza’s motion.

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II. THIS COURT SHOULD ISSUE AN OPINION CLARIFYING TO LOWER COURTS THAT THE STANDARD FOR PREJUDICE IS FLEXIBLE AND CASE-SPECIFIC

Mr. Espinoza’s case highlights a need for further guidance from this Court for the lower courts regarding the standard for establishing prejudice. As Respondent outlined in its brief (ABM 16), the Court of Appeal below is not alone in engaging in a formulaic comparison of the facts in *Vivar* rather than considering the totality of the circumstances in the case before the court. (See *People v. Salinas* (August 18, 2021, F082342) 2021 WL 3660788 (nonpub. opn.)) Therefore, in reversing the decision of the Court of Appeal, this Court’s opinion should clarify that the standard to establish prejudice under section 1473.7 and *Vivar* is flexible and case specific.

Under the particular facts of *Vivar*, this Court emphasized the evidence of that defendant’s strong ties to the United States. The Court of Appeal below focused instead on the fact that “the defendant [in *Vivar*] quickly learned of adverse immigration consequences after his conviction by plea and ‘promptly sent a series of letters to the court expressing confusion about the situation ...’ [Citation.]” (Opn., p. 7.) The Court of Appeal further stated that “Espinoza’s concerns regarding immigration consequences could have been documented prior to settling the case, in conversations with plea counsel.” (Opn. 7.)

The trial courts and Courts of Appeal need guidance to consider the totality of the circumstances rather than focus on

the presence or absence of one particular aspect of evidence relating to whether the defendant established prejudice under section 1473.7. The Court of Appeal below focused on the specific facts in *Vivar* and not an overall showing of prejudice. Prejudice is shown by a totality of the circumstances, not a formulaic checking of the boxes.

By requiring contemporaneous statements by the defendant regarding immigration consequences, the lower courts' decisions had the effect of excluding all those defendants who, like Mr. Espinoza, did not learn of the adverse immigration consequences of their plea until well after entering the plea. In such cases, the defendants would have had no way of making the sort of contemporaneous statements made in *Vivar*. Thus, the facts in *Vivar* should not be used as a checklist against which all other cases are compared. As Respondent notes, the facts in *Vivar* are sufficient for establishing prejudice under section 1473.7 but are by no means necessary. (ABM 22.)

There are varying circumstances that could corroborate the claim that immigration consequences were a paramount concern to the defendant, such as those in Mr. Espinoza's case. Respondent lists some of the other circumstances courts may encounter to establish prejudice.² This highlights the importance

² In this non-exhaustive list of potential facts that could support a finding of prejudice, Respondent states:

“Where a defendant can show that the possible custodial sentence following a conviction at trial was not substantially greater than the sentence

of having a standard for determining prejudice that is flexible rather than a formulaic comparison of the facts of one case to the facts of *Vivar* as occurred here in the court below.

Therefore, to settle this important question of law, the Court should issue an opinion clarifying that the facts in *Vivar* are not a checklist and that courts should consider the totality of the circumstances in each case that may provide evidence of prejudice.

CONCLUSION

Mr. Espinoza respectfully requests that this Court reverse the Court of Appeal's decision affirming the denial of his Penal Code section 1473.7 motion, remand the matter to the Superior Court with instructions to grant Mr. Espinoza's motion based on the evidence corroborating his claim immigration consequences were a paramount concern. In addition, the Court should also

actually served as the result of a plea, that evidence can corroborate the assertion that the defendant would not have accepted the plea offer if properly informed of its immigration consequences." (ABM 24.)

However, it is important that comparing the sentence pled to and the potential exposure after trial does not also lead to a merely formulaic analysis. As this Court knows, plea negotiations and decisions are complex and often coercive. A person who is unaware of the life-altering adverse immigration consequences of a plea may act drastically different than they would if they had been aware of those consequences. Thus, while in a particular case looking at the sentence the defendant pled to and the potential exposure if convicted at trial may make sense, the courts should avoid simply comparing the two numbers without further analysis of the totality of the circumstances.

issue a clarifying opinion stating that a showing of prejudice is based on the totality of the circumstances and not on the presence or absence of individual items of evidence as discussed in more detail above.

Dated: May 3, 2022

Respectfully submitted,

SANGER SWYSEN & DUNKLE

By: /s/ Stephen K. Dunkle
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CERTIFICATE OF WORD COUNT

California Rules of Court, Rule 8.520(c)(1)

I have run the “word count” function in Microsoft Word and hereby certify that this brief contains 1,489 words, including footnotes.

Dated: May 3, 2022

/s/ Stephen K. Dunkle
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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
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Case Number: **S269647**

Lower Court Case Number: **F079209**

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Date

/s/Jake Swanson

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