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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent, v. JOHNNY MORALES Defendant and Appellant.	No. S137307 San Bernardino County Superior Ct. No. FVA 015456 **CAPITAL CASE**

Appeal from the Judgment of the Superior Court of the State of California for the County of San Bernardino

HONORABLE INGRID A. UHLER

APPELLANT'S SECOND SUPPLEMENTAL OPENING BRIEF

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent, v. JOHNNY MORALES, Defendant and Appellant.	No. S137307 San Bernardino County Superior Ct. No. FVA 015456 **CAPITAL CASE**

APPELLANT'S SECOND SUPPLEMENTAL OPENING BRIEF

II.
VIOLATIONS OF THE RACIAL JUSTICE ACT MANDATE REVERSAL OF MR. MORALES'S CONVICTION AND DEATH SENTENCE

A. Introduction

Appellant, Johnny Morales, was born and raised in Honduras, a country in Central America. (14RT 3025-3027, 3043-3044; 29CT 8365.) He immigrated to the United States when he was around 18 years old. (29CT 8376-8377, 8399.) He was convicted of killing Elia Torres-Lopez and sentenced to death in San Bernardino County on August 12, 2005. (29CT 8277; 2SCT 466.) He was monolingual in Spanish at the time of his arrest and prosecution, assisted by a Spanish language interpreter at trial. (See, e.g., 1RT 5; 2RT 231; 10RT 1957; 13RT 2800; 14RT 3077.)

Mr. Morales's trial was tainted by an instance of racial bias in jury selection that violated the Racial Justice Act (RJA). A juror who explicitly expressed anti-Central American bias in her questionnaire was seated on the jury that convicted Mr. Morales and sentenced him to death. (Part C, post.)

As set forth in Part D-1, post, the seated juror's explicit exhibition of anti-Central American bias toward Mr. Morales based on his national origin in violation of the RJA requires reversal without inquiry into prejudice. In any event, as set forth in Part D-2, post, because respondent cannot carry their heavy burden of proving beyond a reasonable doubt that the deliberating juror's explicit exhibition of anti-Central American bias did not influence the jurors' unanimous death verdict, the death judgment must be reversed.

B. The 2020 enactment of the Racial Justice Act

In 2020, the California Legislature declared "we can no longer accept racial discrimination and racial disparities as inevitable in our criminal justice system." (Assem. Bill No. 2542 (2019–2020 Reg. Sess.) § 2, subd. (g) [findings and declarations] (A.B. 2542).) To that end, the Legislature enacted the RJA, a statutory scheme for combatting racial discrimination and disparities in every facet of the criminal legal system. (*Ibid.*; Pen. Code § 745.)[1] Effective January 1, 2023, the RJA became applicable to all cases not final on appeal. (§

[1] All statutory references are to the Penal Code unless otherwise noted.

745, subd. (j)(1), as amended by Assem. Bill No. 256 (2021-2022 Reg. Sess.).)[2]

Section 745, subdivision (a)(1), provides that a violation of the RJA is established if certain trial participants, including a prosecutor and a juror, "exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin." Similarly, subdivision (a)(2) provides that a violation of the RJA is established if, during trial, certain participants, including a prosecutor and a juror "used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful."[3]

The RJA defines "racially discriminatory language" broadly, as "language that, to an objective observer, explicitly or implicitly

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[2] A defendant with RJA claims "based on the trial record" may "raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence." (Assem. Bill No. 1118 (2023–2024 Reg. Sess.) § 1; § 745, subd. (b).) Because the RJA claims set forth below are all based on the trial record and allege violations of section 745, subdivision (a), they are cognizable in this direct appeal.

[3] This brief sometimes uses the term "race" or "racial" when referring to anti-Latino bias, even though "Latino" identifies a person's ethnicity rather than their race. The United States Supreme Court has "used the language of race when discussing the relevant constitutional principles in cases involving Hispanic persons." (*Peña-Rodriguez v. Colorado* (2017) 580 U.S. 206, 214.) This Court has done so as well. (See *People v. Gomez* (2018) 6 Cal.5th 243, 310–312.)

appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity, or national origin." (§ 745, subd. (h)(4).) In the context of a statute or rule designed to eliminate bias, like the RJA, an objective observer is described as a "person who is aware of the history of explicit race discrimination in America and aware of how that impacts our current decision-making in nonexplicit, or implicit, unstated, ways." (*State v. Zamora* (Wash. 2022) 512 P.3d 512, 523; see also Civ. Proc. § 231.7, subd. (d)(2)(A) [defining an objective observer (in the context of jury selection) as a person "aware that unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors"].)

"The RJA's prohibition on the use of racially discriminatory language covers explicit appeals to bias as well as facially neutral language that implicitly appeals to racial bias. (§ 745, subd. (h)(4).)" (*People v. Bankston* (2026) 19 Cal.5th 786, 856 (*Bankston*).) The Legislature thus recognizes that implicit bias, even if activated unintentionally or unconsciously, nevertheless infects a trial with racism. (Stats, 2020, ch. 317, § 2, subd. (i); *Bonds v. Superior Court* (2024) 99 Cal.App.5th 821, 828 ["Indeed, the primary motivation for the [RJA] was the failure of the judicial system to afford meaningful relief to victims of unintentional but *implicit* bias"], original italics.)

RJA violations arising from implicit appeals to racial bias in cases tried before the effective date of the statute require reversal unless the state can prove them harmless beyond a reasonable

doubt. (*Bankston, supra,* 19 Cal.5th at p. 870.) While this Court has not had occasion to hold whether explicit statements exhibiting bias, or explicit appeals to bias, towards the defendant based on his or her race, ethnicity, or national origin by a seated juror in violation of section 745, subdivisions (a)(1) or (a)(2) are subject to the same harmless error analysis or automatic reversal, as explained in Part E-1, post, it follows from its analysis in *Bankston* that such explicit violations of the RJA demand reversal per se, without inquiry into prejudice.

Against this background, the RJA violations set forth below require reversal of the entire judgment or, at the least, of the true findings on the robbery and burglary special circumstance allegations and death judgment.

C. Seated Juror Number 2's statements explicitly exhibiting anti-Central American bias towards Mr. Morales based on his national origin violated the RJA

The jury questionnaire completed by the potential jurors included a section plainly intended to root out bias against Mr. Morales based on his race, ethnicity or national origin. On the questionnaire, seated Juror Number 2 admitted to "some racial attitudes[.]" (13CT 3712.) When asked, "Would you say that you have some racial attitudes?" Juror No. 2 replied yes. (13CT 3728.) Asked "how did they start?," she replied, "Those who feel sorry for themselves and do nothing to rise and achieve for a better life." (13CT 3728.) Although she did not specify the race about whom she had this attitude, when specifically asked about Central America,

she expressed specific anti-Central American bias. Asked, "Have you ever heard of any problems [in Central America] related to crime?" Juror Number 2 circled "corruption" and "poverty" and wrote, "Children are not cared for. Children are used as slaves." (13CT 3730.)

It is axiomatic that an expression of bias against the people of a particular race, ethnicity, or national origin generally is proof of bias against an individual person of that race, ethnicity, or national origin. This Court has recognized and applied this logic in other contexts. In *People v. Lindberg* (2008) 45 Cal.4th 1, for instance, this Court was asked to decide whether substantial evidence supported a special circumstance finding that the victim, who was Asian, was "intentionally killed because of his or her race, color, nationality or country of origin." (Pen. Code, § 190.2, subd. (a)(16).) In resolving this question in the affirmative, the Court pointed to evidence of the defendant's animus against Asians generally as proof of his animus against the Asian victim in particular. (*Lindberg, supra*, at pp. 37-41; accord, e.g., *In re Sassounian* (1995) 9 Cal.4th 535, 549 [evidence of defendant's animus against Turks in general indicated a specific bias against the victim because of his Turkish ethnicity].) In other words, an expression of bias against people of the defendant's race, ethnicity, or national origin in general – like Juror Number 2's expression of bias against people of Central American origin – is necessarily an expression of bias "towards the defendant" within the meaning of section 745, subdivisions (a)(1) and (a)(2).

Despite Juror Number 2's expression of anti-Central American bias in her questionnaire and its relevance to critical

issues in this case, neither the trial court nor counsel questioned Juror 2 about it on voir dire. Nor was she dismissed for cause or with an available peremptory challenge. Instead, she sat on the jury that resolved against Mr. Morales the difficult question of whether or not he was the actual killer in the guilt phase and the significantly weightier question of whether he should live or die in the penalty phase.

Juror Number 2's clear and explicit exhibition of bias towards the people of Central American origin and hence "towards the defendant" Morales, who was born and raised in Central America, was a patent violation of the RJA's prohibition against "exhibit[ing] bias or animus towards the defendant because of the defendant's . . . national origin." (§ 745, subds. (a)(1) and (a)(2).)

D. Reversal is required

1. Seated Juror Number 2's explicit statement exhibiting bias towards Mr. Morales based on his national origin requires reversal per se

In its recent decision in *People v. Bankston, supra*, this Court held that "with respect to cases tried to judgment before the RJA took effect, the use of language that implicitly appeals to racial bias" in violation of section 745, subdivision (a)(2) requires reversal unless the "People can show that the use of such language was harmless beyond a reasonable doubt." (*Bankston, supra,* 19 Cal.5th at p. 870.) Juror Number 2's remarks were not an implicit appeal to racial bias but rather an *explicit* exhibition of bias toward Mr. Morales based on his national origin in Central America in violation of section 745,

subdivision (a)(1). This Court has not had occasion to render a holding on the standard applicable to *explicit* appeals to, or *explicit* statements exhibiting bias toward the defendant based on race, ethnicity or national origin. However, *Bankston's* analysis did provide guidance from which it logically follows that such explicit violations of the RJA demand reversal per se, without inquiry into prejudice.

In arriving at its holding regarding the applicability of harmless error review to implicit appeals to racial bias, *Bankston* discussed at some length, and distinguished, the opinion in *People v. Simmons* (2023) 96 Cal.App.5th 323 (*Simmons*), which held that section 745, subdivision (e) demanded per se reversal for the violation in that case. (*Bankston, supra,* 19 Cal.5th at pp. 872-873, 876.) A key difference noted by the *Bankston* opinion was that the RJA violation in *Simmons* was that the prosecutor's racially biased remarks in that case were an "overt[] and flagrant[]," – i.e. an explicit – appeal to racial bias and the Court distinguished *Simmons* on that ground. (*Bankston, supra*, at p. 876.) And in discussing the legislative findings that "[r]acial bias in criminal prosecutions … is never minor or harmless" (Stats. 2025, ch. 721, § 1, subd. (e)), the Court emphasized that the Legislature cited *Simmons* – an explicit appeal to bias case – for that proposition (*Bankston, supra*, at p. 870.)

The Court went on to explain that it is reasonable to distinguish between explicit and implicit appeals to bias in this regard because there are "appreciable differences" in harm resulting from implicit appeals based on race-neutral language as compared

to that resulting from explicit appeals as in *Simmons* (*Bankston, supra*, 19 Cal.5th at p. 876, citing *Simmons, supra*, 96 Cal.App.5th at pp. 335, 339.) It stands to reason that if an explicit appeal to bias in violation of section 745, subdivision (a)(2) is more harmful than an implicit one, a juror's independent, explicit exhibition of bias towards the defendant in violation of section 745, subdivision (a)(1) is likewise more harmful than an implicit appeal to a juror's implicit bias. Indeed, in a closely related context, it is well-settled that the seating of even a single biased juror in violation of the Sixth Amendment is so harmful to the trial process that it "taints the entire trial" (*Wolfe v. Brigano* (6th Cir. 2000) 232 F.3d 499, 503), amounts to structural error (*People v. Nesler* (1997) 16 Cal.4th 561, 579), and requires reversal per se (see, e.g., *Morgan v. Illinois* (1992) 504 U.S. 712, 729; *People v. Nesler*, *supra,* 16 Cal.4th at p. 579; *Hughes v. United States* (6th Cir. 2001) 258 F.3d 453, 463; *United States v. Gonzalez* (9th Cir. 2000) 214 F.3d 1109, 1111; *Johnson v. Armontrout* (8th Cir. 1992) 961 F.2d 748, 755).

Thus, recognizing a crucial distinction between "an argument that overtly and flagrantly appeals to racial bias" – or explicit appeals to bias (*Bankston, supra*, 19 Cal.5th at p. 876) and more subtle violations arising from implicit appeals, the *Bankston* Court affirmed: "We do not question the result [reversing automatically] in *Simmons*, a case concerning what might be characterized as an explicit appeal to racial bias." (*Id.* at p. 840.) This Court should now make explicit its implicit approval of *Simmons'* reasoning that RJA violations arising from *explicit* appeals to, or exhibitions of, racial bias demand reversal per se.

The Legislative finding that appeals to racial bias like that in *Simmons* can "never [be] minor or harmless" is an unambiguous reflection of the Legislature's intent that *explicit* appeals racial bias in violation of section 745, subdivision (a)(2) are not susceptible of harmless error analysis and thus require reversal per se. (Stats. 2025, ch. 721, § 1, subd. (e).) It logically follows that the Legislature intended the same standard to apply to *explicit* "exhibit[ions]" of racial bias in violation of section 745, subdivision (a)(1). As the Court recognized in *Bankston,* there are sound reasons to distinguish between a harmless beyond a reasonable doubt standard applicable to implicit violations of the RJA and a reversal per se standard applicable to explicit violations, as in *Simmons*, *supra.* For all these reasons, this Court should effectuate the intent of the Legislature and adopt *Simmons's* application of a reversal per se standard to violations of the RJA arising from explicit appeals to racial bias under section 745, subdivision (a)(2) and explicit exhibitions of bias under subdivision (a)(1).

Hence, seated Juror Number 2's explicit exhibition of bias towards Mr. Morales based on his Central American origin in violation of the RJA demands reversal of the entire judgment.

2. Reversal of the death judgment is required because respondent will be unable to prove beyond a reasonable doubt that Juror Number 2's explicit exhibition of bias toward Mr. Morales's based on his Central American origin did not contribute to the death verdict

Even if the harmless error standard applicable to implicit appeals to racial bias this Court adopted in *Bankston* applies to

Juror Number 2's explicit expression of bias in violation of the RJA, reversal of the death judgment is required. In *Bankston, supra,* this Court adopted the so-called "*Chapman*" test for reversible error, which requires reversal unless the state proves "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." (*Chapman v. California* (1967) 386 U.S. 18, 24; *Bankston, supra,* 19 Cal.5th at pp. 870, 878-879; see also *Sullivan v. Louisiana* (1993) 508 U.S. 275, 279.) In applying this standard, the inquiry is not "whether, in a trial that occurred without the error, a guilty verdict [or death judgment] would surely have been rendered" based upon the strength of the evidence. (*Sullivan v. Louisiana, supra*, at p. 279.) Rather, the reviewing court must determine "whether the guilty verdict [or death judgment] actually rendered in this trial was surely unattributable to the error." (*Ibid*.) The state's heavy burden of proving an error harmless beyond a reasonable doubt is particularly difficult to satisfy when the error occurs at the penalty phase of a capital case, where the jury's "role is not merely to find facts, but also — and most important — to render an individualized, normative determination about the penalty appropriate for the particular defendant — i.e., whether he should live or die." (*People v. Brown* (1988) 46 Cal.3d 432, 448.)

Justice Liu elaborated on this truism is his concurring opinion in *Bankston, supra*:

> I would underscore that "an appeal to racial bias skews decisionmaking, including the moral and normative sentencing function, against the defendant." [Citation.] The typical approach to harmless error analysis —

> subtracting out improperly admitted evidence or statements and then assessing the aggravating and mitigating circumstances in the remaining record — often will not be adequate or appropriate in evaluating the impact of bias on a penalty judgment. Statements that activate implicit stereotypes of Black people as violent, for example, can thoroughly bias the jury's assessment of aggravating and mitigating evidence by improperly priming jurors to overweigh the former and downplay the latter. (Accord, maj. opn., ante, at 879-880.) Because the operation of implicit bias can shift the entire frame through which jurors evaluate the evidence, it is "extraordinarily difficult" for a reviewing court to conclude beyond a reasonable doubt that such bias did not prejudice a capital jury's normative penalty determination. [Citation.]

(*Bankston, supra,* 19 Cal.5th at p. 893 (conc. opn. of Liu, J).)

Here, the particular anti-Central American bias Juror Number 2 exhibited cut to core issues before the jurors on the question of penalty. First, children were involved in the burglary and robbery that resulted in their mother's death and a significant component of the prosecution's case for aggravation was the mistreatment and traumatization of those children during the crimes. (14RT 3143-3145, 3181-3184.) Yet the prosecution's own evidence of Mr. Morales's surreptitiously recorded statements to his mother offered a more mitigating view of the circumstances of the crime in that they revealed the burglary Mr. Morales planned with his co-felons did not contemplate that women and children would even be present, much less harmed. (29CT 8319-8321, 8325.) As defense counsel argued in mitigation, the victim's death while her children were in the next room resulted from a burglary gone terribly wrong, not a premeditated plan to kill a woman and

traumatize her children. (14RT 3200.) In other words, the victim's death and the trauma her children suffered was due to an aberrant confluence of circumstances that were not planned and unlikely to recur.

But Juror Number 2's bias that Central Americans inherently devalue and mistreat children could have caused her to view the defense account of the circumstances of the crime with a jaundiced eye, attribute the mistreatment of the victim's children to Mr. Morales and his very nature as a man of Central American origin, and accordingly give greater weight to the harm the children suffered as an aggravating circumstance weighing in favor of Mr. Morales's death than a non-biased juror might otherwise have. Respondent cannot prove the contrary beyond a reasonable doubt.

Second, a significant component of the case for mitigation centered on Mr. Morales's childhood growing up in Honduras, which was marked by privation, poverty, physical abuse and abandonment. (14RT 3025-3035, 3043-3052, 3056-3057; 29CT 8365, 8377, 8390-8392.) Among other hardships he endured – and particularly relevant to Juror Number 2's expression of bias that Central Americans treat children as "slaves" – Mr. Morales was forced to leave school as a young child to go to work in the fields for eight to nine hours a day. (14RT 3038-3039; 29CT 8371, 8384-8395.)

But according to Juror Number 2's expressed bias, the childhood Mr. Morales experienced was *normal* for children in Central America, from which it would follow that it was not particularly mitigating as it related to Mr. Morales as a unique individual. One of the most common methods prosecutors employ to

minimize the mitigating weight of a capital defendant's evidence of a difficult childhood is to argue that the defendant had siblings who had effectively endured the same childhood, yet they did not become murderers. And, indeed, the prosecutor in this case made that very argument in urging the jurors not to give mitigating weight to the evidence of Mr. Morales's Honduran childhood. (14RT 3178.) The superficially appealing logic of this argument could have been embraced by Juror Number 2 due to her expressed bias, based on the reasoning that *most* children in Central America have childhoods like Mr. Morales yet not all Central Americans grow up to become murderers. Her bias thus carried an intolerable risk that she would accord less mitigating weight to the evidence of Mr. Morales's Honduran childhood than a juror without such bias would have accorded it. Again, respondent cannot prove the contrary beyond a reasonable doubt.

For all these reasons, respondent cannot satisfy their heavy burden of proving beyond a reasonable doubt that Juror Number 2's expression of anti-Central American bias did not influence the death verdict. Hence, Juror Number 2's violation of the RJA demands reversal of the death judgment.

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CONCLUSION

For the reasons set forth above, this Court should reverse the judgment in its entirety. Alternatively, the Court should vacate the death verdict.

Respectfully submitted,

Dated: August 24, 2026

GALIT LIPA
STATE PUBLIC DEFENDER

/s/
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I am the Supervising Deputy State Public Defender assigned to represent appellant, Johnny Morales, in this automatic appeal. I conducted a word count of this brief using our office's computer software. On the basis of that computer-generated word count, I certify that this brief, excluding tables and certificates, is 3,406 words in length.

Dated: August 24, 2026

/s/
C. DELAINE RENARD
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DECLARATION OF SERVICE

Case Name: *People v. Johnny Morales*
Case Number: California Supreme Court No. S137307
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No. FVA015456

I, **Kecia A. Bailey**, declare as follows:

I am over the age of 18 and not a party to this cause. My business address is 1111 Broadway, Suite 1000, Oakland, CA 94607. I served a copy of the following document(s):

APPELLANT'S SECOND SUPPLEMENTAL OPENING BRIEF

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **August 24, 2026**, at Sacramento County, CA.

Kecia A. Bailey

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