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No. S137307 - CAPITAL CASE

In the Supreme Court of the State of California

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

v.

JOHNNY MORALES,
Defendant and Appellant.

San Bernardino County Superior Court, Case No. FVA015456
The Honorable Ingrid A. Uhler, Judge

SECOND SUPPLEMENTAL RESPONDENT'S BRIEF

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September 22, 2026

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ARGUMENT

MORALES IS NOT ENTITLED TO RELIEF UNDER THE RACIAL JUSTICE ACT

Morales argues the judgment in this case must be reversed because Juror No. 2 exhibited explicit bias toward him in her jury questionnaire responses in violation of the Racial Justice Act (RJA). (Appellant's Second Supplemental Opening Brief (SSAOB) 6-7, 10-19.) Not so. Juror No. 2's responses did not exhibit bias or animus toward Morales because of his race, ethnicity, or national origin. (Pen. Code,[1] § 745, subd. (a)(1), (a)(2).) But if this Court finds a violation of the RJA, it was harmless beyond a reasonable doubt.

A. The Racial Justice Act

Effective January 1, 2021, the Legislature enacted the RJA, which it codified in a scheme of interrelated statutes (§§ 745, 1473, subd. (e), 1473.7, subd. (a)(3)), "to eliminate racial bias from California's criminal justice system" and "to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing." (Stats. 2020, ch. 317, § 2, subd. (i); see *People v. Demolle* (2026) 19 Cal.5th 1117, 1196; *People v. Chhuon* (2026) 19 Cal.5th 1018, 1085; *People v. Barrera* (2026) 19 Cal.5th 919, 977; *People v. Bankston* (2026) 19 Cal.5th 786, 855; *People v. Wilson* (2024) 16 Cal.5th 874, 944-945.) The Legislature intended "to provide remedies that will eliminate racially discriminatory practices in the criminal justice system, in addition to intentional

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

discrimination." (Stats. 2020, ch. 317, § 2, subd. (j).) Effective January 1, 2024, the Legislature amended section 745 to permit a defendant to allege a record-based violation of the RJA on direct appeal from a conviction or sentence. (*Bankston*, at p. 856; *Wilson*, at p. 947.)

The RJA prohibits the State from seeking or obtaining a criminal conviction on the basis of race, ethnicity, or national origin. (§ 745, subd. (a).) "The Act sets forth four categories of conduct, any of which, if proved, is enough to 'establish' a violation of section 745, subdivision (a)." (*Young v. Superior Court* (2022) 79 Cal.App.5th 138, 147; § 745, subd. (a)(1)-(4).)

Morales's claim implicates section 745, subdivision (a)(1) and (2). Section 745, subdivision (a)(1), provides that a violation of the RJA is established if the defendant proves by a preponderance of the evidence that "[t]he judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin." As relevant here, subdivision (a)(2) provides that an RJA violation occurs when, "[d]uring the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, . . . an expert witness, or a juror, . . . exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful."

It is the defendant's burden to establish a violation of section 745, subdivision (a), by a preponderance of the evidence. (§ 745, subd. (a); *Bankston*, *supra*, 19 Cal.5th at pp. 855-856.) The

defendant need not prove intentional discrimination. (§ 745, subds. (a)(2) & (c)(2); *Bankston*, at p. 887 (conc. opn. of Liu, J.); *Chhuon*, *supra*, 19 Cal.5th at pp. 1109-1110 (conc. and dis. opn. of Liu, J.).)

In cases where the judgment was entered before January 1, 2021, a violation of section 745, subdivision (a)(1) or (2) is reviewable for prejudice. If the State can prove beyond a reasonable doubt that the violation did not contribute to the judgment, relief under the RJA is not available. (§ 745, subd. (k); *Bankston*, *supra*, 19 Cal.5th at pp. 878-879 [concluding that in cases where judgment was entered before 2021, harmless beyond a reasonable doubt standard applies on appeal to section 745, subd. (a)(2) claims].)

B. Juror No. 2's jury questionnaire responses did not exhibit bias or animus toward Morales because of his race, ethnicity, or national origin

Morales claims that Juror No. 2's responses in her jury questionnaire exhibited explicit bias or animus toward him because of his race, ethnicity, or national origin. He relies on two statements made in the 25-page questionnaire. Morales fails to establish by a preponderance of the evidence a violation of section 745, subdivision (a)(1) or (2).

Morales first references that Juror No. 2 checked "yes" to answer the question, "Would you say that you have some racial attitudes?" (SSAOB 10, citing 13CT 3728.) Juror No. 2 then answered two clarifying questions, indicating that her concern was about "[t]hose who feel sorry for themselves and do nothing to rise and achieve for a better life," based on her "[h]ard young

life growing up." (13CT 3728.) Morales admits that Juror No. 2 "did not specify the race about whom she had this attitude." (SSAOB 10.) Thus, this response does not establish that Juror No. 2 exhibited bias or animus *toward* Morales because of his race, ethnicity, or national origin. (§ 745, subd. (a)(1), (2).) Rather, Juror No. 2's explanations show that her attitude was directed toward people who make no effort to overcome a hard life generally and not toward people of any particular race, ethnicity, or national origin.

Morales then attempts to combine Juror No. 2's response to the question about "racial attitudes" with questions two pages later regarding her knowledge of "problems . . . related to crime" in Central America. (SSAOB 10-11, citing 13 CT 3730.) In doing so, Morales skipped over several vital questions showing that Juror No. 2 harbored no bias or animus toward Morales because of his race, ethnicity, or national origin. Specifically, the questionnaire advised the jurors that Morales "is a Honduran national" and asked, "Is he at a disadvantage with you because he is a Honduran national?" (13CT 3728.) Juror No. 2 responded, "No—Know nothing of his background." (13CT 3728.) The next question asked, "Do you feel that because the defendant is a Honduran national, you prefer not to sit as a juror on this case?" to which Juror No. 2 responded, "No." (13CT 3728.) Importantly, when asked about her observations of Morales in the courtroom, Juror No. 2 described him as "attentive" and said there was nothing about his appearance that biased her either for or against him. (13CT 3729.)

The final questions in the "racial and cultural" section of the questionnaire asked about the jurors' travels to Central America. (13CT 3729.) Juror No. 2 indicated she had never traveled there and therefore did not answer several specific questions relating to such travel. (13CT 3729-3730.) The final subset of questions asked, "Have you ever heard of problems there related to Crime? Corruption? Poverty? [circle any that apply] What role, if any, do you believe poverty plays in their crime problems?" (13CT 3730.) Juror No. 2 circled both "corruption" and "poverty" and on the question about poverty explained, "Children are not cared for. Children are used as slaves." (13CT 3730.) The questionnaire then asked if she had "ever heard of Central American Law Enforcement and Vigilante groups," and if so, asked for her opinion on such groups. Juror No. 2 responded, "It seems that they make their own law as they go along," expressed "[i]t's a sad crime on what goes on down there," and opined that the situation was worse in Central America than the United States. (13CT 3730.)

Reviewing the "racial and cultural" section of the questionnaire as a whole, it is clear that Juror No. 2 knew nothing of Morales's background, thought he was entitled to a fair trial without regard to his Honduran nationality, and was comfortable sitting on the jury regardless of Morales's nationality. The questions about crime and poverty in Central America simply showed that Juror No. 2 was aware of vigilante groups in that area and demonstrated empathy toward the people subjected to the tactics of such groups.

Despite Morales's argument to the contrary (SSAOB 11), Juror No. 2's comments regarding crime in Central America did not exhibit any racial bias or animus toward people from Central America generally or, by extension, Morales specifically. Her statements identified the neglect and exploitation of children as problems associated with conditions in Central America; they did not attribute those conditions to Central American people or otherwise express hostility toward them. Because Juror No. 2's responses did not exhibit bias or animus toward people of Central American origin generally, Morales's reliance on cases permitting an inference of bias toward an individual from evidence of bias against the group to which the individual belongs is misplaced. (See SSAOB 11.)

Jury questionnaires are part of the voir dire process. (*Zamudio v. Superior Court* (1998) 64 Cal.App.4th 24, 30.) "[T]he raison d'être of juror questionnaires is to assist both sides and counsel in the selection of a fair and impartial jury." (*Bellas v. Superior Court of Alameda County* (2000) 85 Cal.App.4th 636, 639.) The questions are designed "to ensure that [negative] sentiments play[] no role in the jury's determinations of [a defendant's] guilt or penalty." (*Barrera*, *supra*, 19 Cal.5th at p. 982.) That is exactly what occurred in this case. None of Juror No. 2's responses in the "racial and cultural" section of the questionnaire show explicit bias or animus toward Morales because of his race, ethnicity, or national origin. As will be discussed in detail below, the totality of Juror No. 2's responses indicate that she was an unbiased and impartial juror and made

her judgments based on the evidence presented during trial. She gave neither party any concern that she was biased in either direction. That is the reason neither party moved to dismiss her for cause or exercised an available peremptory challenge.

Because Morales has failed to show by a preponderance of the evidence that Juror No. 2's questionnaire responses violated the RJA, this claim should be rejected.

C. Moreover, it is apparent beyond a reasonable doubt that any violation did not contribute to the verdicts in this case

1. Morales's RJA claim is subject to harmless-error review under section 745, subdivision (k)

In four recently issued opinions, this Court held that section 745's harmless error provision and its "beyond a reasonable doubt" standard apply to RJA claims raised on direct appeal in cases where judgment was rendered before the RJA's effective date. (*Demolle*, *supra*, 19 Cal.5th at p. 1201; *Chhuon*, *supra*, 19 Cal.5th at p. 1090; *Barrera*, *supra*, 19 Cal.5th at pp. 985-986; *Bankston*, *supra*, 19 Cal.5th at pp. 878-879; see also § 745, subd. (k) ["beyond a reasonable doubt" standard applies to claims "based on a violation of paragraph (1) or (2) of subdivision (a)"]; *Bankston*, at p. 870 ["[T]he RJA expressly prescribes a form of harmless-error review for cases in which judgment was entered before the RJA's effective date, where an RJA claim based on the use of racially discriminatory language *or other exhibition of bias* is raised by way of petition"], italics added, citing § 745, subd.

(k).) Morales's case is such a case[2]; thus, even if an RJA violation occurred here, the State can demonstrate beyond a reasonable doubt that it did not contribute to the verdicts. (§ 745, subd. (k).)

Despite this Court's clear pronouncements, Morales asks this Court to again revisit this issue. He argues that Juror No. 2's remarks were an explicit exhibition of bias toward him under section 745, subdivision (a)(1), and therefore reversal is required without regard to prejudice. (SSAOB 12-15.) His argument relies on this Court's opinion in *Bankston* and its discussion of *People v. Simmons* (2023) 96 Cal.App.5th 323. (SSAOB 12-15.) Morales's argument is not persuasive. Section 745, subdivision (k) applies to claims "based on a violation of paragraph (1) or (2) of subdivision (a)"—the very provisions Morales invokes here—and draws no distinction between explicit and implicit bias for purposes of the applicable prejudice standard.

In *Simmons*, the People conceded that the prosecutor's rebuttal argument violated the RJA and that defense counsel rendered ineffective assistance in failing to raise the violation at sentencing, which occurred after the effective date of the Act. (*Simmons*, *supra*, 96 Cal.App.5th at p. 327.) The judgment was reversed on that basis. (*Ibid.*) The Court of Appeal majority noted that subdivision (k), added to section 745 in 2022, expressly allowed for a prejudice analysis in cases where judgment was

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[2] Morales was convicted on September 24, 2004. (27CT 7755-7774, 7784-7785; 13RT 2778-2783.) The jury returned a death verdict on November 5, 2004. (28CT 8043, 8045; 14RT 3225.) The trial court imposed the death sentence on September 12, 2005. (29CT 8275, 8277; 14RT 3292-3295, 3303.)

entered before January 1, 2021. (*Id.* at p. 337.) However, the majority found subdivision (k) did not apply because Simmons's judgment was entered *after* January 1, 2021. (*Ibid.*) Therefore, the court remanded the matter to the trial court to exercise its discretion in the first instance to determine the appropriate remedy from the list of possible remedies included in section 745, subdivision (e). (*Id.* at p. 339.) The dissent disagreed, arguing it was the province of the judiciary, not the Legislature, "to determine what constitutes a 'miscarriage of justice' within the meaning of article VI, section 13." (*Id.* at p. 345.) Given that the majority in *Simmons* held a prejudice analysis was not applicable because judgment was entered after the RJA's effective date, it is easily distinguished from this case, where judgment was entered long before the Act's effective date.

Moreover, as Morales acknowledges (see SSAOB 13-15), this Court considered the *Simmons* opinion in *Bankston*. This Court disagreed that Bankston was entitled to automatic reversal and held instead that the beyond-a-reasonable-doubt prejudice standard applied. (*Bankston*, *supra*, 19 Cal.5th at pp. 870-879.) While this Court limited its holding to "cases tried to judgment before the RJA took effect" (*id.* at p. 870), that is true of Morales's case as well. This Court adopted the prejudice standard in part to avoid the serious constitutional questions noted by the dissent in *Simmons*. (*Id.* at pp. 870-873.) While Bankston urged the Court to find reversal automatic relying on *Simmons*, this Court differentiated *Simmons* because it "involved a judgment entered

after the RJA's effective date, and thus outside the time period addressed in subdivision (k)." (*Id.* at p. 872.)

Section 745, subdivision (k) does not distinguish between claims of explicit or implicit bias for purposes of the applicable prejudice standard, nor do this Court's recent opinions addressing claims of alleged violations of the RJA. Given this Court's holding that the beyond a reasonable doubt prejudice standard applies in all cases where judgment was entered before the RJA took effect, Morales's argument for automatic reversal without regard to prejudice should be rejected.

2. Applying the beyond a reasonable doubt standard to this case, any error was harmless

Even assuming the two questionnaire responses identified by Morales violated the RJA, any such violation was harmless beyond a reasonable doubt.

Initially, Morales's prejudice argument is based on inferences that are not supported by Juror No. 2's responses. First, he argues that Juror No. 2 stated that Central Americans "inherently devalue and mistreat children," which could have led her to attribute the mistreatment of the victim's children to an inherent characteristic of Central Americans. (SSAOB 17-18.) Second, he argues that Juror No. 2 characterized the deprivation and mistreatment of children in Central America as "normal," which could have led her to devalue the mitigating evidence of Morales's difficult childhood. (SSAOB 18-19.) But Juror No. 2 said neither of those things. The terms "inherently" and "normal" are Morales's characterizations of Juror No. 2's responses, not terms or concepts expressed by Juror No. 2. While

Juror No. 2 identified the neglect and exploitation of children as problems associated with crime and poverty conditions in Central America, nothing in her responses suggested that she would attribute the mistreatment of the victim's children to Morales because he was Honduran or that she would regard the circumstances of Morales's childhood as less mitigating because he grew up in Honduras. Further, Morales himself presented evidence of mistreatment he experienced as a child in Honduras as mitigation, which further undermines his contention that Juror No. 2's awareness of child neglect and exploitation under conditions of crime and poverty in Central America reflected bias *against* Morales.

The mitigating evidence concerning Morales's childhood included domestic violence and physical discipline in his household, which led to his parents' divorce and his mother moving to the United States. (See RB 59-61.) Morales's brother nevertheless testified that for the most part the brothers had a normal childhood. (See RB 59-61.) After they completed primary school, Morales and his brother went to work with their father in the fields, but Morales's brother testified that Morales still had time to hang out and party with his friends. (See RB 59-61.) Perhaps other than working in the fields with his family around the age of 12, none of the other mitigating evidence presented was unique to Honduran or Central American cultures. In any event, nothing in Juror No. 2's responses suggests that her views about conditions in Central America would have caused her to

discount this mitigating evidence in weighing the appropriate penalty.

More generally, Juror No. 2's questionnaire is permeated with fairness and lack of bias. With regard to her "general background," Juror No. 2 answered that her religious preference, Mormon, would influence her "[t]o be honest with the judgment I may pass" and it would not make it difficult for her to sit in judgment of another because "[e]verybody deserves a trial." (13CT 3718.) She further stated, "I would accept the challenge to be fair and past [*sic*] a fair and honest judgement based on the evidence." (13CT 3720; see also 13CT 3717 ["All evidence would need to be show[n]. Would judge at such time"].) In the "criminal justice" section, Juror No. 2 identified the proper roles of prosecutors and defense attorneys and stated that she had no reason to be biased for or against either side. (13CT 3721-3724.) The same was true for the section on "law enforcement," where Juror No. 2 stated she did not believe the testimony of law enforcement officers would necessarily be more or less accurate or truthful than civilians. (13CT 3724-3726.)

Juror No. 2 agreed that Morales was entitled to a jury trial and that a judgment should not be made "[u]ntil all evidence is presented before a jury panel." (13CT 3727.) Juror No. 2 accurately explained the concept of reasonable doubt and the presumption of innocence, confirmed she would not hold it against Morales if he chose not to testify, and stated the decision "will be based on facts – factual evidence." (13CT 3727-3728.) Juror No. 2 firmly stated, "I have an open mind" and neither her

attitude toward, experiences with, nor individual moral stance regarding crime would make it difficult for her to be an impartial juror. (13CT 3728.)

The questionnaire also asked for Juror No. 2's views on the two possible penalties if Morales was found guilty. Regarding the questions whether she would always vote one way or the other, Juror No. 2 responded "no" and repeatedly stated it "depends on facts." (13CT 3732; see also 13CT 3734-3735.) Juror No. 2 confirmed she had no moral, philosophical, or religious objection to the death penalty and that she would weigh and consider all aggravating and mitigating factors presented before deciding on a penalty. (13CT 3733.)

In the concluding questions, Juror No. 2 indicated she had no biases that could interfere with her ability to be an impartial juror and no reason not to be impartial, explaining, "I have an open mind and heart." (13CT 3735-3736.) Her responses to oral voir dire were similarly open. When asked by the court if she would be willing to listen to the other jurors and change her opinion, Juror No. 2 responded, "I can weigh the facts if they can point to me that there's more guilt than not, I can sway." (4RT 652-653.) This response reflects Juror No. 2's willingness to consider the views of other jurors and reconsider her own based on the facts.

During oral voir dire with Morales's counsel, Juror No. 2 volunteered, "We all have to work together." (4RT 664.) When asked how she would feel if she was selected as a juror, Juror No. 2 responded, "I feel comfortable. I feel Mr. Morales deserves a

fair trial. Like you said, he is innocent until proven guilty. It is up to the prosecution to prove to me that he is guilty." (5RT 764.) Defense counsel followed up on that issue and asked Juror No. 2, "And if you were not convinced beyond a reasonable doubt, would you have any problem whatsoever coming back into this courtroom and looking at [the prosecutor] and saying not guilty?" to which Juror No. 2 responded, "Yes, I feel comfortable with that." (5RT 764.) As to the death penalty, Morales's counsel asked whether Juror No. 2 could "honestly listen to the evidence and see if you could make a decision as to whether he remains in prison for the rest of this life without parole or whether he deserves the death penalty?" to which Juror No. 2 responded that she would follow the law, would consider everything the court instructed her to consider, and would make a decision based on the facts presented. (5RT 764-765.)

Finally, the evidence supporting the guilt verdict was overwhelming, including Morales's confession to his mother that he shot Elia in the heart with an AK-47. (29CT 8311, 8318, 8322, 8326.) He explained that he shot her because she recognized him, providing a motive for the murder. (29CT 8310, 8320 8325.) Then he blamed Elia for her own death, saying that if she had just been quiet and not said his name, they would have left without killing her. (29CT 8325.) As to penalty, Juror No. 2 opined in her questionnaire that life in prison without the possibility of parole was a more severe penalty than death because Morales "is so young—he can live another 50 years of having not enjoyed what life has to offer." (13CT 3734-3735.)

While Juror No. 2 presumably followed the trial court's instruction that death was the most severe penalty, her answer on the questionnaire undercuts Morales's contention that the alleged bias predisposed Juror No. 2 toward a death judgment. (SSAOB 18.)

Given the lack of support for Morales's asserted theories of prejudice, the overwhelming evidence of Morales's guilt, Juror No. 2's repeated assurances that she would make a decision based on the evidence presented and held no biases toward any party, and her responses to the questions regarding penalty, respondent can demonstrate beyond a reasonable doubt that any RJA violation did not contribute to the judgment. (See *Bankston*, *supra*, 19 Cal.5th at p. 879 [explaining standard].)

CONCLUSION

For the reasons stated above, in respondent's brief, and respondent's first supplemental brief, respondent respectfully requests that the judgment be affirmed in its entirety.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Second Supplemental Respondent's Brief uses a 13-point Century Schoolbook font and contains 3,749 words.

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