In the Supreme Court of the State of California

In re **ABELINO MANRIQUEZ,** **On Habeas Corpus.**	**CAPITAL CASE** Case No. S141210 (Related to *People v. Manriquez*, Supreme Court No. S038073)

Los Angeles County Superior Court, Case No. VA004848
The Honorable Robert Armstrong, Judge

BRIEF ON MERITS AND EXCEPTIONS TO REFEREE'S REPORT

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CONSTITUTIONAL PROVISIONS

I. PRELIMINARY STATEMENT

On February 17, 2006, Petitioner filed a petition for writ of habeas corpus in this Court. Thereafter, on January 10, 2008, Petitioner filed a first amended petition for writ of habeas corpus. On January 23, 2008, this Court ordered Respondent to file an informal response to the first amended petition. Respondent filed an informal response on December 31, 2008. Petitioner filed a reply to the informal response on June 30, 2009.

On June 20, 2012, this Court issued an order to show cause ("OSC") why relief should not be granted on the ground of juror misconduct. On September 7, 2012, Respondent filed a return to the OSC. On December 6, 2012, Petitioner filed a traverse to the return. Thereafter, on March 20, 2013, this Court ordered that a reference hearing be held to answer the following four questions: (1) What were Juror C.B.'s reasons for failing to disclose her childhood abuse on her juror questionnaire and during voir dire at petitioner's trial? (2) Was the nondisclosure intentional and deliberate? (3) Considering Juror C.B.'s reasons for failing to disclose these facts, was her nondisclosure indicative of juror bias? (4) Was Juror C.B. actually biased against petitioner?

Los Angeles County Superior Court Judge William C. Ryan was appointed to sit as a referee, and on July 30, 2013, held an evidentiary hearing. On January 27, 2014, the parties appeared before Judge Ryan to argue the matter. On April 21, 2014, Judge Ryan filed his findings of fact.

On April 21, 2014, this Court invited the parties to file exceptions, if any, to the report of the referee, and to submit simultaneous merits briefing. Respondent has no exceptions to the referee's report, and respectfully files the instant brief on the merits.

II. STANDARD OF REVIEW

The standard of review of a referee's report is well-settled:

> The referee's conclusions of law are subject to independent review, as is his resolution of mixed questions of law and fact. [Citations.] . . . The referee's findings of fact, though not binding on the court, are given great weight when supported by substantial evidence. The deference accorded factual findings derives from the fact that the referee had the opportunity to observe the demeanor of witnesses and their manner of testifying. [Citation.]

(*In re Marquez* (1992) 1 Cal.4th 584, 603; *see also In re Avena* (1996) 12 Cal.4th 694, 710; *In re Ross* (1995) 10 Cal.4th 184, 201; *People v. Mayfield* (1993) 5 Cal.4th 142, 199; *People v. Kasim* (1997) 56 Cal.App.4th 1360, 1379.)

III. STATEMENT OF FACTS[1]

> On January 22, 1989, at approximately 4:40 a.m., [Petitioner] was a patron at the Las Playas restaurant, located in Paramount. An argument ensued between [Petitioner] and Miguel Garcia, ending when [Petitioner] shot Garcia several times, after which [Petitioner] departed from the premises.
>
> On February 22, 1989, at approximately 10:00 p.m., [Petitioner] was a patron at Fort Knots, a topless dance bar, located in South Gate. While Daneen Baker, one of the dancers, performed on stage with her back to the audience, she felt a customer touch her thighs. Such conduct was prohibited, and believing that [Petitioner] had touched her, she asked the doorman, George Martinez, to evict him. Martinez did so, after which [Petitioner] attempted to reenter the bar on several occasions that evening, finally returning with a firearm and fatally shooting Martinez at point-blank range.
>
> On November 29, 1989, at approximately 2:00 p.m., [Petitioner] and his girlfriend, Sylvia Tinoco, were drinking beer and ingesting cocaine at the Rita Motel, located in Compton. Efrem Baldia (occasionally referred to by witnesses by his nickname, "Arnulfo") drove to the motel and [Petitioner], knowing that Baldia had been romantically linked to Tinoco, left

[1] Taken from the factual overview presented by this Court in *People v. Manriquez* (2005) 37 Cal.4th 547, 552.

the motel room looking angry, confronted Baldia (who was unarmed) in the motel parking lot, and fatally shot him.

On January 21, 1990, shortly after midnight, [Petitioner] was drinking beer at the Mazatlan Bar, located in Compton. [Petitioner] approached the bar to order another beer and encountered Jose Gutierrez, who, according to one witness, had been sitting at the bar, asleep, with his head resting on his arm. [Petitioner] grabbed Gutierrez by the neck and shot him repeatedly.

Approximately one month later, on February 22, 1990, law enforcement officers arrested [Petitioner] at the Charter Suburban Hospital, located in Paramount, where he was being treated for a fresh gunshot wound in the shoulder.

(*People v. Manriquez*, *supra*, 37 Cal.4th at p. 552.)

IV. EVIDENTIARY HEARING

On March 20, 2013, this Court ordered that a referee be appointed to take evidence and make findings of fact on the following four questions regarding a claim of juror misconduct related to Petitioner's trial (*People v. Abelino Manriquez*, Los Angeles County Superior Court case number VA004848):

"1. What were Juror C.B.'s reasons for failing to disclose her childhood abuse on her juror questionnaire and during voir dire at Petitioner's trial?

"2. Was the nondisclosure intentional and deliberate?

"3. Considering Juror C.B.'s reasons for failing to disclose these facts, was her nondisclosure indicative of juror bias?

"4. Was Juror C.B. actually biased against Petitioner?"

Los Angeles County Superior Court Judge William Ryan was appointed as a referee. On July 30, 2013, Judge Ryan held an evidentiary hearing at which Juror C.B. appeared and testified. The evidence presented

at the evidentiary hearing regarding these questions, and the referee's findings, are summarized below.

QUESTION 1: What were Juror C.B.'s reasons for failing to disclose her childhood abuse on her juror questionnaire and during voir dire at Petitioner's trial?

Juror C.B. testified that she did not consider the physical abuse she suffered as a child to have been an act of violence. (EHT[2] at p. 20; Findings at p. 4.) Moreover, when asked by Petitioner's counsel whether in 1993 she considered the abuse she suffered to have been "an act of violence, not necessarily a crime," Juror C.B. replied, "No, I didn't." (EHT at p. 20; Findings at p. 4.) Juror C.B. elaborated, "I guess my answer is, you had to be there. When you are growing up and that's your environment, you take it in stride." (EHT at p. 20; Findings at p. 4.)

At the hearing, Juror C.B. acknowledged that she had been present during a violent act, and that when she answered Question 64 in 1993 ("Have you or any relative or friend ever experienced or been present during a violent act, not necessarily a crime?"), she "did not interpret the question as imposing any timeframe limitation *per se*." (Findings at p. 5; see also EHT at p. 38.) Petitioner's counsel asked Juror C.B. directly, "Why did you not disclose your childhood abuse in response to this question?" Juror C.B. replied, "Because the question indicated a violent act not necessarily a crime, and I did not consider my childhood a violent act." (EHT at p. 38; Findings at p. 5.)

The referee found that Juror C.B. did not disclose her childhood abuse on her juror questionnaire and during voir dire because Juror C.B. "did not consider her childhood experiences to have been criminal acts or acts of violence, and she did not consider herself to be a victim of crime."

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[2] "EHT" refers to the transcript of the June 30, 2013, evidentiary hearing.

(Findings at p. 3.) More specifically, the referee found that "Juror C.B.'s experiences of growing up as a child in the 1950's, which shaped her view of life, support her explanation of why she did not disclose the circumstances of her abusive childhood." (Findings at p. 7.) The referee also found that "Juror C.B.'s perspective that she did not view herself as a victim of either a crime or act of violence is consistent with how society viewed and treated abuse of children 60 years ago, as distinct from how society now views and treats such abuse." (Findings at p. 7.)

QUESTION 2: Was the nondisclosure intentional and deliberate?

Juror C.B. testified that she did not consider herself to have been a victim of a crime during her childhood, and accordingly, that she had honestly answered questions 63 through 66 of the pretrial juror questionnaire. (EHT at p. 19.) Specifically, in response to a question posed by the referee regarding her thought processes, Juror C.B. testified that she "tried to recall if [she] had been a victim of any crime, and nothing came to mind." (EHT at p. 68; Findings at p. 9.)

The referee found that Juror C.B. did not disclose her childhood experiences because they did not come to mind at the time she was filling out the questionnaire or during voir dire. (Findings at p. 9.) The referee also found that Juror C.B. "explicitly and credibly testified that when she completed the juror questionnaire...she believed that she had honestly answered every question on the questionnaire, including Questions 63 through 66." (Findings at pp. 9-10; see also EHT at p. 52.) The referee further found that "[n]o evidence has been adduced to indicate that Juror C.B. intentionally *concealed* her childhood experiences. After observing Juror C.B., the referee concludes that all voir dire questions were answered in good faith by her with no intent to conceal or deceive." (Findings at p. 10, italics in original.)

QUESTION 3: Considering Juror C.B.'s reasons for failing to disclose these facts, was her nondisclosure indicative of juror bias?

The referee found that Juror C.B.'s nondisclosure was not indicative of juror bias. (Findings at p. 10.) Specifically, the referee determined that because Juror C.B. credibly and honestly believed that she had accurately answered the questions on the juror questionnaire, and accordingly, "her nondisclosure of the circumstances of her abusive childhood history is not indicative of actual juror bias." (Findings at p. 10.) The referee also found:

> Juror C.B.'s voir dire answers and her credible testimony that she gave time and thought to the responses she gave in her pretrial questionnaire are an indication that she was attempting to provide full and honest answers, and that her nondisclosure was inadvertent. From a review of the whole record, the referee concludes that no [actual juror] bias existed.

(Findings at p. 11.)

QUESTION 4: Was Juror C.B. actually biased against Petitioner?

The referee expressly found that "Juror C.B. was not actually biased against Petitioner." (Findings at p. 11.) Specifically, the referee found credible Juror C.B.'s testimony in response to Respondent's question – "Were you biased against [Petitioner] at any time while you were a sitting juror in this trial?" – "No, sir, I was not." (Findings at p. 12; EHT at p. 53.)

In addition to this direct testimony, the referee considered circumstantial evidence that supported its conclusion Juror C.B. was not actually biased against Petitioner, i.e., that Juror C.B. voluntarily disclosed her childhood abuse when she responded to defense counsel's post-verdict questionnaire. (Findings at p. 12.) The referee found Juror C.B. to be "forthright and candid" in this regard, and noted that she had discussed her history with both Petitioner's habeas counsel and respondent's counsel. (Findings at p. 12.)

The referee also rejected Petitioner's argument that Juror C.B. was actually biased because (according to Petitioner's counsel) she "prejudged Petitioner's mitigation defense and was unable to put aside her own history of abuse to determine his sentence." (Findings at p. 12.) The referee further noted that Juror C.B. did not use "extrajudicial information" in deciding Petitioner's case, instead finding that she had simply interpreted the evidence based on her own life experience: "The reference to [Juror C.B.'s] childhood experience during deliberation was merely her way of analyzing the penalty phase evidence through the prism of her life's experiences and not misconduct of any sort." (Findings at pp. 12-13.)

ARGUMENT

A. Introduction

Petitioner's contention that Juror C.B.'s failure to disclose her childhood abuse was intentional and indicative of actual bias is without merit, unsupported by the record, and does not entitle him to habeas relief. A review of the entire record, including the evidence adduced at the July 30, 2013, evidentiary hearing, shows that Juror C.B. failed to disclose her childhood abuse on the pretrial juror questionnaire because she did not consider her childhood experiences to have been criminal acts or acts of violence. Thus, Juror C.B.'s nondisclosure was not intentional, deliberate, or indicative of juror bias. Nor was Juror C.B. actually biased against Petitioner. Accordingly, Petitioner is not entitled to habeas relief.

B. Applicable Law

A criminal defendant has the right to a trial by an impartial jury under both the federal and state Constitutions. (U.S. Const., amends. VI and XIV; Cal. Const., art. I, § 16; *Irvin v. Dowd* (1961) 366 U.S. 717, 722 [81 S.Ct. 1639, 6 L.Ed.2d 751]; *In re Hamilton* (1999) 20 Cal.4th 273, 293-294.) An impartial jury is "one in which no member has been improperly influenced"

and "every member is capable and willing to decide the case solely on the evidence before it." (*In re Hamilton*, *supra*, 20 Cal.4th at p. 294, internal citations and quotation marks omitted.)

During jury selection, the parties have the right to challenge and excuse candidates who clearly or potentially cannot be fair. (*In re Hamilton*, *supra*, 20 Cal.4th at p. 295.) Voir dire is the vehicle used to discover actual or potential juror bias: "'A juror who conceals relevant facts or gives false answers during the voir dire examination thus undermines the jury selection process and commits misconduct. [Citations.]'" (*Ibid.*, quoting *In re Hitchings* (1993) 6 Cal.4th 97, 111; see also *McDonough Power Equipment, Inc. v. Greenwood* (1984) 464 U.S. 548, 554 [104 S.Ct. 845, 78 L.Ed.2d 663] [Noting that voir dire protects a defendant's right to an impartial trier of fact "by exposing possible biases, both known and unknown, on the part of potential jurors"].)

Juror misconduct involving the concealment of material information during voir dire raises the presumption of prejudice. (*In re Hitchings*, *supra*, 6 Cal.4th at p. 119; *Wiley v. Southern Pacific Transportation Co.* (1990) 220 Cal.App.3d 177, 189 [applying the presumption of prejudice standard in case involving concealment on voir dire].) This presumption 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. (*In re Hitchings*, *supra*, 6 Cal.4th at p. 119, internal quotations marks omitted; see also *People v. Miranda* (1987) 44 Cal.3d 57, 117.) However, "[w]hat is clear is that an honest mistake on voir dire cannot disturb a judgment in absence of proof that the juror's wrong or complete answer hid the juror's actual bias." (*In re Hamilton*, *supra*, 20 Cal.4th at p. 300; see also *People v. Wilson* (2008) 44 Cal.4th 758, 823 [inadvertent or unintentional failures to disclose as a

result of misunderstanding or forgetfulness do not constitute good cause for removal of a juror].) "Moreover, the juror's good faith when answering voir dire questions is the most significant indicator that there was no bias." (*Ibid*, citing *McDonough Power Equipment, Inc. v. Greenwood*, *supra*, 464 U.S. at pp. 556-557 (conc. opn. of Blackmun, J.); *id.* at pp. 557-558 (conc. opn. of Brennan, J.).)

Whether an individual verdict must be overturned for jury misconduct or irregularity is resolved by reference to the substantial likelihood test, an objective standard which asks whether the misconduct is inherently likely to have influenced the juror. (*People v. Harris* (2008) 43 Cal.4th 1269, 1303; *In re Hitchings*, *supra*, 6 Cal.4th at p. 118; see also *People v. Marshall* (1990) 50 Cal.3d 907, 950-951.) "Any presumption of prejudice is rebutted, and the verdict will not be disturbed," if the record, including the nature of the misconduct and the surrounding circumstances, "indicates there is no reasonable probability of prejudice, i.e., no substantial likelihood that one or more jurors were actually biased against the defendant." (*People v. Harris*, *supra*, 43 Cal.4th at p. 1303-1304; *In re Hamilton*, *supra*, 20 Cal.4th at p. 296.)

As is particularly relevant in the instant context, the mere fact a juror provides inaccurate information during voir dire does not automatically mean that juror has committed prejudicial misconduct. "To invalidate the result of a...trial because of a juror's mistaken, though honest response to a question [on voir dire], is to insist on something closer to perfection than our judicial system can be expected to give." (*McDonough Power Equipment, Inc. v. Greenwood*, *supra*, 464 U.S. at p. 555.) "A trial represents an important investment of private and social resources, and it ill serves the important end of finality to wipe the slate clean simply to recreate the peremptory challenge process because counsel lacked an item

of information which objectively he should have obtained from a juror on voir dire examination." (*Ibid.*)

C. The Referee Correctly Determined That Juror C.B. Provided Credible Reasons For Failing To Disclose Her Childhood Abuse On Her Juror Questionnaire And During Voir Dire

Here, the referee correctly determined that Juror C.B. provided credible reasons for failing to disclose her childhood abuse in the pretrial juror questionnaire. (Findings at pp. 7-8.) Juror C.B. testified that she did not consider herself to be a victim of a crime; rather, she considered herself to be "a victim of circumstance," and had never given any thought before or during the trial as to whether her childhood experiences meant that she had been "criminally assaulted." (EHT at pp. 19-20.) While Juror C.B. may have been mistaken insofar as she never considered herself to be a victim of childhood crime, as recognized by the referee, her "experiences of growing up as a child in the 1950's, which shaped her view of life, support her explanation of why she did not disclose the circumstances of her abusive childhood." (Findings at p. 7; see *McDonough Power Equipment, Inc. v. Greenwood, supra*, 464 U.S. at p. 555.)

The referee's finding in favor of Juror C.B.'s credibility is corroborated by the fact that Juror C.B.'s testimony explaining the different aspects of her testimony was internally consistent (see Findings at p. 8), and that she voluntarily disclosed information about her childhood initially to Petitioner's counsel, and thereafter to Petitioner's habeas counsel and counsel for Respondent (see Findings at p. 12). At the evidentiary hearing, Juror C.B. consistently testified the sole reason for not disclosing her childhood abuse was that she did not consider any incident during her childhood to be a violent act (EHT at p. 38), and did not consider the abuse she suffered to have been a crime (EHT at pp. 19-20). The referee found this testimony to be credible. (Findings at p. 7.) The fact that juror C.B.

did not intentionally conceal this information strongly supports the referee's finding that her testimony was credible, and accordingly, that she harbored no bias against Petitioner. (Findings at pp. 7-8; see also *In re Hamilton*, *supra*, 20 Cal.4th at p. 300; see also *McDonough Power Equipment, Inc. v. Greenwood*, *supra*, 464 U.S. at pp. 556-557 (conc. opn. of Blackmun, J.); *id.* at pp. 557-558 (conc. opn. of Brennan, J.).) Indeed, as noted by the referee, that she voluntarily disclosed this information "strongly suggests that [Juror C.B.] had no hidden agenda or bias when serving as a juror." (Findings at p. 7.)

D. The Referee Correctly Determined That Juror C.B. Did Not Intentionally Conceal Her Childhood Abuse

The referee also properly determined that Juror C.B. did not intentionally conceal her childhood abuse. (Findings at pp. 9-10.) In *People v. Ray* (1996) 13 Cal.4th 313, a juror sent a note to the trial court, disclosing the fact that the daughter of a victim attended the same high school that employed the juror as a guidance counselor. (*Id.* at pp. 342-343.) In rejecting the petitioner's claim of juror bias, this Court stated:

> The manner in which the foregoing information surfaced supports this determination. If [the juror] had formed improper opinions about the case and intended to act in ways prejudicial to the defense, common sense suggests that he would have simply remained silent. The fact that [the juror] voluntarily came forward after [the victim's] testimony and revealed a possible "connection" to the [victim's] family indicates that his failure to mention the information earlier was inadvertent, and that he was attempting to perform his duties in good faith.

(*Id.* at p. 344.)

Such is the case at bar. Juror C.B. voluntarily disclosed her childhood abuse to Petitioner's counsel in response to counsel's post-verdict questionnaire, and thereafter openly discussed her childhood abuse with Petitioner's habeas counsel and counsel for Respondent. As in *People v.*

Ray, had Juror C.B. intended to intentionally conceal her childhood abuse, she "would have simply remained silent." (*Ibid.*) This conclusion is supported by Juror C.B.'s testimony at the evidentiary hearing, at which she stated that her childhood abuse simply "did not come to mind" during the voir dire process, including when she filled out the pretrial juror questionnaire. (EHT at p. 68.) Indeed, Juror C.B. expressly testified that when she completed the pretrial juror questionnaire in 1993, she believed that she had done so honestly, testimony that the referee found to be credible. (Findings at p. 9.) Such an "honest mistake on voir dire cannot disturb a judgment" absent proof that it concealed actual bias. (*In re Hamilton*, *supra*, 20 Cal.4th at p. 273.)

The instant matter is also similar to *In re Boyette* (2013) 56 Cal.4th 866. In *Boyette*, a juror was asked "to disclose his own criminal history, that of relatives and friends, and whether he or a relative had a problem with alcohol or drugs." (*Id.* at p. 889.) The juror "failed to disclose information relevant to all three of these topics." (*Ibid.*) Nevertheless, this Court found that even though the juror's omissions "were based on a dubious interpretation of the relevant question," his interpretation "though erroneous and unreasonable – was sincerely held. For other omissions, [the juror] simply did not recall, for example, a distant relative." (*Id.* at p. 890.) Adopting the referee's finding that the juror's failure to disclose information was neither intentional nor deliberate, this Court found that there was no substantial likelihood of actual bias, and rejected the petitioner's challenge. (*Ibid.*)

Here, even if Juror C.B. "erroneously" believed that she had not been a victim of a crime as a child, her belief was "sincerely held" (*In re Boyette*, *supra*, 56 Cal.4th at p. 890), and corroborated by her credible testimony at the evidentiary hearing. Because Juror C.B. answered the pretrial juror questionnaire in good faith based on her understanding of the meaning of

the questions, her honest mistake does not suggest that she intentionally concealed her past or that she was biased against Petitioner. (*Ibid.*; see also *In re Hamilton*, *supra*, 20 Cal.4th at p. 300.)

E. The Referee Properly Found That Juror C.B.'s Failure To Disclose Her Childhood Abuse Was Not Indicative Of Juror Bias

For may of the same reasons set forth above, the referee also correctly determined that Juror C.B.'s failure to disclose her childhood abuse was not indicative of actual bias. (Findings at pp. 10-11.) A juror who *intentionally* conceals material information or provides false answers during voir dire has committed misconduct. (*People v. Wilson*, *supra*, 44 Cal.4th at pp. 822-823; see also *People v. San Nicolas* (2004) 34 Cal.4th 614, 644.) However, the evidence here established that Juror C.B. did not intentionally conceal any information. Instead, Juror C.B.'s childhood history "did not come to mind" (EHT at p. 68), and for that reason it was inadvertently not disclosed during voir dire. Moreover, Juror C.B. was the person who disclosed the abuse she had suffered, and thereafter voluntarily and candidly discussed her childhood history with Petitioner's habeas counsel and Respondent's counsel. (Findings at p. 12.) That Juror C.B. volunteered this information and voluntarily cooperated with the parties in these proceedings is not consistent with an a finding of juror bias. (See *People v. Ray*, *supra*, 13 Cal.4th at p. 344.) Put another way, Juror C.B.'s "honest mistake on voir dire" was not indicative of juror bias. (*In re Boyette*, *supra*, 56 Cal.4th at p. 890; *In re Hamilton*, *supra*, 20 Cal.4th at p. 300.)

F. Juror C.B. Was Not Actually Biased Against Petitioner

Incorporating by reference the reasoning as to its answers to the prior three questions, the referee properly found that Juror C.B. was not actually biased against Petitioner. Juror C.B. emphatically denied that she held any bias against Petitioner. At the evidentiary hearing, counsel for Respondent

specifically asked Juror C.B., "Were you biased against [Petitioner] at any time while you were sitting as a juror in this trial?" Juror C.B. replied, "No, sir, I was not." (EHT at p. 53.) The referee found this response to be credible. (Findings at p. 12.) This Court may certainly consider and rely on Juror C.B.'s statement in addressing Petitioner's claim of juror bias. (See, e.g., *Smith v. Phillips* (1982) 455 U.S. 209, 215 [102 S.Ct. 940, 71 L.Ed.2d 78] [court may ascertain the impartiality of a juror by relying solely upon the testimony of the juror in question]; *id.* at p. 217, fn. 7 ["'One may not know or altogether understand the imponderables which cause one to think what he thinks, but surely one who is trying as an honest man to live up to the sanctity of his oath is well qualified to say whether he has an unbiased mind in a certain matter'"], quoting *Dennis v. United States* (1950) 339 U.S. 162, 171 [70 S.Ct. 519, 94 L.Ed. 734].)

In evaluating an allegation of juror bias, this Court may look to both direct and circumstantial evidence. (See, e.g., *People v. Thomas* (2012) 53 Cal.4th 771, 819 [court may view the "entire record" logically bearing on a circumstantial finding of likely bias in addressing claim of juror misconduct]; see also *In re Carpenter* (1995) 9 Cal.4th 634, 654 [noting that "the totality of the circumstances surrounding [alleged juror] misconduct must still be examined to determine objectively whether a substantial likelihood of actual bias nonetheless arose"].) Here, in addition to direct evidence showing that Juror C.B. was not biased against Petitioner, the referee also found that circumstantial evidence supported its findings, noting again that Juror C.B. had been the person who disclosed her childhood abuse to the parties and the Court: "Like the juror in [*In re Hamilton, supra*, 20 Cal.4th at p. 273], when specifically asked during the July 30, 2013, evidentiary hearing about her childhood experiences, Juror C.B. was forthright and candid." (Findings at p. 12.) Thus, both direct and circumstantial evidence support the referee's findings.

CONCLUSION

For the reasons stated, respondent respectfully requests that this Court adopt the referee's findings of fact and deny the Petition for Writ of Habeas Corpus.

Dated: July 22, 2014

Respectfully submitted,

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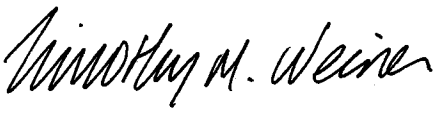
CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S BRIEF ON MERITS AND EXCEPTIONS TO REFEREE'S REPORT** uses a 13-point Times New Roman font, and contains 4,411 words.

Dated: July 22, 2014

KAMALA D. HARRIS
Attorney General of California



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DECLARATION OF SERVICE

Case Name: ***In re Abelino Manriquez On Habeas Corpus*** **No.:** **S141210**

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 collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 22, 2014, I served the attached **BRIEF ON MERITS AND EXCEPTIONS TO REFEREE'S REPORT,** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

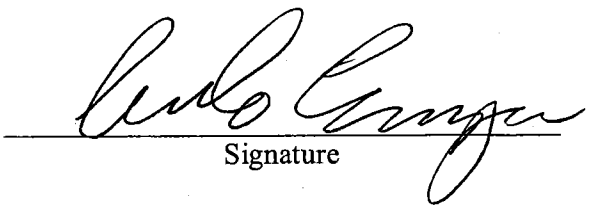
PLEASE SEE ATTACHED SERVICE LIST

On July 22, 2014, I caused the original and 10 copies of the **BRIEF ON MERITS AND EXCEPTIONS TO REFEREE'S REPORT,** in this case to be overnight delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by OnTrac Delivery Service; Tracking Number B10303155598.

On July 22, 2014, I caused one electronic copy of the **BRIEF ON MERITS AND EXCEPTIONS TO REFEREE'S REPORT,** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 22, 2014, at Los Angeles, California.

Consuelo Esparza
Declarant



Signature

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