

Victor J. Morse
Attorney at Law
3145 Geary Boulevard, PMB # 232
San Francisco, CA 94118-3316

phone 415-387-5828
email victormorse@comcast.net

February 3, 2022

Jorge E. Navarrete,
Clerk and Executive Officer
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-3600
(*by TrueFiling*)

Re: In re Rico Ricardo Lopez
California Supreme Court No. S258912
California Court of Appeal No. A152748
Sonoma County Superior Court No. SCR 32760

Dear Mr. Navarrete:

I am counsel for petitioner Rico Ricardo Lopez in the above-captioned appeal.

Petitioner files this letter brief in reply to the Attorney General's letter brief concerning this Court's question, "What effect, if any, does Assembly Bill No. 333 (Stats. 2021, ch. 699) have on the issues presented in this case?"

The Attorney General devotes most of its letter brief to contending that Assembly Bill No. 333 ("AB 333") does not apply retroactively to the judgment against petitioner. Petitioner would note here that he does *not* argue that AB 333 applies retroactively to require the reversal of the gang enhancement or gang-murder special circumstance in his case.

Mr. Jorge E. Navarette
PAGE TWO
February 3, 2022

However, petitioner disputes the Attorney General's claim on page 2 of its letter brief that "AB 333 has no effect on this case." For reasons of justice and racial equity, as petitioner has explained in his letter brief, AB 333 overhauled the misguided and harmful gang law that gave rise to the gang-murder special circumstance in petitioner's case. Thus AB 333 provides another compelling reason, separate and distinct from the reasons argued in petitioner's briefs on the merits, that this Court should not rely on the special circumstance to hold the alternative-theory error harmless beyond a reasonable doubt. That is AB 333's effect on this case.

Petitioner also disputes the Attorney General's assertion in footnote 2 on page 3 of its letter brief that AB 333 "would not affect . . . in any way" the inference it asks this Court to draw from the special circumstance concerning "the jury's findings on Lopez's state of mind." To the contrary, any claimed inference from the special circumstance would indeed be affected by this Court's view of AB 333. Because the special circumstance is tainted by the misguided and unjust prior gang law that authorized it, and the special circumstance could not even be proved under the newly amended gang law, this Court should decline to attribute significance to *anything* about the special circumstance, including the Attorney General's claimed inference about the jury's factfinding, which it has argued would require this Court to hold the alternative-theory error harmless.

The Attorney General also fails to consider that in Section 2(e) of AB 333, the Legislature noted, "Studies suggest that allowing a jury to hear the kind of evidence that supports a gang enhancement before it has decided whether the defendant is

Mr. Jorge E. Navarette
PAGE THREE
February 3, 2022

guilty or not may lead to wrongful convictions.” This finding by the Legislature suggests that the gang evidence admitted at petitioner’s trial under the now invalid prior gang law may well have affected “the jury’s findings on Lopez’s state of mind” at the time it found the gang-murder special circumstance allegation true, contrary to the Attorney General’s assertion in footnote 2.

Thank you for bringing this reply letter brief to the attention of the Supreme Court.

Sincerely,

Victor J. Morse

Victor J. Morse
(SBN 120916)

Attorney for Petitioner
Rico Ricardo Lopez

Certificate of Word Count

Counsel for petitioner Rico Ricardo Lopez hereby certifies that this reply letter brief consists of 569 words (excluding proof of service), according to the word count of the computer word-processing program that produced this brief. (California Rules of Court, rule 8.520(c)(1).)

Dated: February 3, 2022

/s/ Victor J. Morse

Victor J. Morse

Attorney for Petitioner
Rico Ricardo Lopez

**Declaration of Service By Mail
and Electronic Service By Truefiling**

In re Rico Ricardo Lopez on Habeas Corpus (No. S258912)

I, Victor J. Morse, declare that I am a citizen of the United States, over 18 years of age, employed in the County of San Francisco, State of California, and not a party to the subject cause. My business address is 3145 Geary Boulevard, PMB # 232, San Francisco, California 94118-3316. I served a true copy of the attached **Petitioner's Reply Letter Brief** on the following, by placing copies thereof in envelopes addressed as follows:

Mr. Rico Ricardo Lopez # F 23451 Calipatria State Prison P.O. Box 5002 Calipatria, CA 92233-5002	District Attorney 600 Administration, # 212-K Santa Rosa, CA 95403
---	--

Superior Court Clerk
600 Administration Drive
Santa Rosa, CA 95403
*(Attn.: Judge
Dana Beernink Simonds)*

Each said envelope was then, on February 3, 2022, sealed and deposited, in the United States Mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

On February 3, 2022, I caused the TrueFiling website to transmit a PDF version of this document by electronic mail to each of the following using the email addresses indicated:

First District Appellate Project eservice@fdap.org	Attorney General SFAGDocketing@doj.ca.gov
Nerissa Huertas Senior Deputy State Public Defender nerissa.huertas@ospd.ca.gov	Samuel Weiscovitz Deputy State Public Defender samuel.weiscovitz@ospd.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on February 3, 2022, at San Francisco, California.

/s/ Victor J. Morse

Victor J. Morse

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LOPEZ (RICO RICARDO) ON H.C.**

Case Number: **S258912**

Lower Court Case Number: **A152748**

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: **victormorse@comcast.net**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
LETTER	S258912_RLTR_Lopez

Service Recipients:

Person Served	Email Address	Type	Date / Time
Amit Kurlekar Office of the Attorney General 244230	Amit.Kurlekar@doj.ca.gov	e-Serve	2/3/2022 1:59:43 PM
Attorney Attorney General - San Francisco Office Court Added	sfagdocketing@doj.ca.gov	e-Serve	2/3/2022 1:59:43 PM
Victor Morse Attorney at Law 120916	victormorse@comcast.net	e-Serve	2/3/2022 1:59:43 PM
Nerissa Huertas State Public Defender 257831	nerissa.huertas@ospd.ca.gov	e-Serve	2/3/2022 1:59:43 PM
Josephine Espinosa California Dept of Justice, Office of the Attorney General	josephine.espinosa@doj.ca.gov	e-Serve	2/3/2022 1:59:43 PM
Bridget Billeter Office of the Attorney General 183758	bridget.billeter@doj.ca.gov	e-Serve	2/3/2022 1:59:43 PM
First District Appellate Project	eservice@fdap.org	e-Serve	2/3/2022 1:59:43 PM
Samuel Weiscovitz 279298	samuel.weiscovitz@ospd.ca.gov	e-Serve	2/3/2022 1:59:43 PM

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.

2/3/2022

Date

/s/Victor Morse

Signature

Morse, Victor (120916)

Last Name, First Name (PNum)

Law Office of Victor J. Morse

Law Firm