

**XAVIER BECERRA**  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA 94102-7004

Public: (415) 703-5500  
Telephone: (415) 703-5855  
Facsimile: (415) 703-1234  
E-Mail: John.Deist@doj.ca.gov

# SUPREME COURT COPY

October 27, 2017

Jorge E. Navarrete  
Court Administrator and Clerk of the Supreme Court  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, CA 94102-4797

RE: *People v. Joseph Perez*  
Supreme Court California S.F., San Francisco Branch Case No. S104144  
Contra Costa Superior Court, Case No. 990453-3

Dear Mr. Navarrete:

This case is scheduled for oral argument on Tuesday, November 7, 2017, at 1:30 p.m., in Sacramento. For the court's consideration, the People cite the following authorities decided after the submission of the respondent's brief.

Argument I: *People v. Salazar* (2016) 63 Cal.4th 214, 233 & fn. 10 [where practicable, the trial court must conduct voir dire in the presence of other jurors in all criminal cases, including death-penalty cases; error does not support reversal absent a miscarriage of justice]; *People v. Sanchez* (2016) 63 Cal.4th 411, 432-433 [same]; *People v. Leon* (2015) 61 Cal. 4th 569, 584-589 [reasonable limits on length and scope of voir dire are permissible]; *People v. Capistrano* (2016) 59 Cal.4th 830, 854-864 [reiterating the deference owed to a trial court's rulings on attitudes of prospective jurors toward the death penalty, and confirming that sequestered voir dire is not required].

Argument II: *People v. Mai* (2013) 57 Cal.4th 986, 1003-1024 [no conflict of interest between the defendant and his trial attorneys merely because the attorneys had been jointly implicated in a conspiracy to murder a witness].

Argument III: *People v. Peoples* (2016) 62 Cal.4th 718, 773-774 ["If a judge refuses or fails to disqualify herself, a party may seek the judge's disqualification"; failure to move for recusal under CCP § 170.6 forfeits a defendant's appellate argument that the trial judge was biased]; *People v. Johnson* (2015) 60 Cal.4th 966, 979 [a defendant who objected to a judge's participation in the proceedings and merely failed to pursue the statutory appellate remedy under CCP § 170.3 may raise a narrow due process

# DEATH PENALTY

claim on appeal, but a defendant may not “play fast and loose with the administration of justice” by agreeing to allow a judge to preside over the case and later assert the judge was biased]; *People v. Rodriguez* (2014) 58 Cal.4th 587, 626 [“Defendant may not go to trial before a judge and gamble on a favorable result, and then assert for the first time on appeal that the judge was biased”].

Arguments IV and XI: *People v. Sandoval* (2015) 62 Cal.4th 394, 434 [trial court did not apply an unfair double standard in ruling on for-cause challenges to pro-death and pro-life jury candidates]; *People v. Romero* (2015) 62 Cal.4th 1, 44 [defendant’s claim that seated jurors should have been dismissed for cause because of their opinions on the death penalty was forfeited because the defendant did not use an available peremptory challenge to remove that juror or object to the jury as finally constituted].

Arguments V and VIII: *People v. Thompson* (2016) 1 Cal.5th 1043, 1103 [defendant’s failure to request a continuance to meet new evidence was fatal to claim of a prosecutor’s late discovery; “It is defendant’s burden to show that the failure to timely comply with any discovery order is prejudicial, and that a continuance would not have cured the harm.”]; *People v. Williams* (2016) 1 Cal.5th 1166, 1185-1186 [same].

Argument VI(a): *People v. Cage* (2015) 62 Cal.4th 256, 282 [guilt-phase testimony by family members of the victim was not impermissible victim-impact evidence; the evidence explained inconsistencies in a witness’s testimony and provided context and a timeline of events].

Argument VII: *People v. Landry* (2016) 2 Cal.5th 52, 88-89 [excusal of a seated juror after she fell ill was permissible, even though she might have recovered quickly; in the right circumstances, an absence of even a day or less may warrant excusal]; *People v. Sandoval* (2015) 62 Cal.4th 394, 433 [a prospective juror who is unable to reach a decision is unable to perform the duties of a juror and may be removed for cause].

Argument XIX: *People v. Johnson* (2016) 62 Cal.4th 600, 649-650 [victim impact evidence is admissible in California, notwithstanding contrary policies in other states].

Sincerely,

/s/ John H. Deist

JOHN H. DEIST  
Deputy Attorney General  
State Bar No. 136469

For XAVIER BECERRA  
Attorney General

## **DECLARATION OF SERVICE**

Case Name: *People v. Joseph Perez*

No.: **S104144**

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 collecting and processing electronic and physical correspondence. 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. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On October 27, 2017, I electronically served the attached **LETTER TO JORGE E. NAVARRETE, ADMINISTRATOR/CLERK OF THE SUPREME COURT** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on October 27, 2017, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

A. Richard Ellis  
Attorney at Law  
75 Margee Avenue  
Mill Valley, CA 94941  
*Email Address: a.r.ellis@att.net*  
**(Via TrueFiling)**

Scott Kaufman  
Attorney at Law  
California Appellate Project  
101 Second Street, Suite 600  
San Francisco, CA 94105  
*Email Address: filing@capsf.org*  
**(Via TrueFiling)**

Douglass MacMaster  
Acting District Attorney  
Contra Costa County District Attorney's  
P.O. Box 670  
Martinez, CA 94553  
*Email Address:*  
*appellate.pleading@conracostada.org*  
**(Via TrueFiling)**

Clerk of the Court  
Contra Costa County Superior Court  
Wakefield Taylor Courthouse  
725 Court Street  
Martinez, CA 94553-1233  
**(Via U.S. Mail)**

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 October 27, 2017, at San Francisco, California.

S. Chiang

Declarant

/s/ S. Chiang

Signature

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