SUPREME COURT COPY

COPY

In the Supreme Court of the State of California

In re **ROBERT LEWIS, JR.,** **On Habeas Corpus**	Case No. S117235 **CAPITAL CASE**

Los Angeles County Superior Court, Case No. A027897
The Honorable Robert J. Perry, Judge

SUPREME COURT
FILED

JUL 20 2015

Frank A. McGuire Clerk

Deputy

RESPONDENT'S SUPPLEMENTAL BRIEF ~~ON THE MERITS~~

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
JAIME L. FUSTER
Deputy Attorney General
MARGARET E. MAXWELL
Supervising Deputy Attorney General
State Bar No. 169830
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2282
Fax: (213) 897-6496
Email: Margaret.Maxwell@doj.ca.gov
DocketingLAAWT@doj.ca.gov
Attorneys for Respondent

DEATH PENALTY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

Pursuant to this Court's order filed May 19, 2015, respondent submits this supplemental brief addressing the two arguments presented in petitioner's supplemental brief filed May 14, 2015.

ARGUMENT

I. IN DEFINING "MENTAL RETARDATION" (RENAMED "INTELLECTUAL DISABILITY") IN PENAL CODE SECTION 1376, THE LEGISLATURE ADOPTED THE CRITERIA FOR EVALUATING ADAPTIVE BEHAVIOR SET FORTH IN *ATKINS V. VIRGINIA* (2002) 536 U.S. 304

Petitioner contends the May 2014 decision in *Hall v. Florida* (2014) 134 S.Ct. 1986, refutes respondent's assertion that the "definitions" of adaptive behavior impairment recited in footnote 3 of *Atkins v. Virginia* (2002) 536 U.S. 304 were adopted by the Legislature in enacting Penal Code section 1376 because the high court referenced the more recent professional manuals in assessing the constitutionality of Florida's cutoff score requirement for general intellectual functioning. (Pet. Supp. Brf. at pp. 3-5.) As explained below, *Hall* does not answer whether section 1376 incorporates the diagnostic definitions for evaluating adaptive behavior set forth in *Atkins* footnote 3 or whether section 1376 instead permits (or mandates) use of the changing diagnostic terminology of the medical community in completing the assessment of adaptive behavior impairment required by section 1376.[1]

Respondent previously argued that the Referee erred selecting the criteria for assessing "adaptive behavior" set forth in the eleventh edition of the American Association for Intellectual and Developmental Disabilities ("AAIDD") Manual published in 2010 (the "Green Book") rather than the criteria set forth in footnote 3 of *Atkins* that were endorsed by our

[1] All further statutory references will be to the Penal Code, unless otherwise stated.

Legislature in its legislative history enacting section 1376. (See Resp. Merits Brf. at pp. 96-99; Resp. Reply Brf. at pp. 28-30; see Report at pp. 4-6, fn. 3 & p. 21, fn. 32.) As relevant to these proceedings, the California statute defines "intellectual disability" as "the condition of significantly subaverage general intellectual function existing concurrently with deficits in adaptive behavior and manifested before 18 years of age." (§ 1376, subd. (a).) The legislative history for section 1376 specifically references the clinical "definitions" of mental retardation recited in *Atkins v. Virginia*, *supra*, 536 U.S. at page 309, footnote 3. (*In re Hawthorne* (2005) 35 Cal.4th 40, 47.) The *Atkins* footnote recited the criteria / definitions of "adaptive behavior" set forth in the American Psychiatric Association's Diagnostic and Statistical Manual published in 2000 (the DSM-IV) and the 1992 manual published by the American Association on Mental Retardation ("AAMR" – now known as the American Association for Intellectual and Developmental Disabilities ("AAIDD")).

In *Hall v. Florida*, supra, 134 S.Ct. 1986, the United States Supreme Court examined Florida's implementation of the *Atkins* rule–specifically Florida's statutory requirement that "significantly subaverage general intellectual function" must be demonstrated by an IQ test score of 70 or below (the defendant's lowest score admitted into evidence was 71) and the Florida Supreme Court's determination that the statutory definition was a rigid one that did not include the standard error of measurement. (*Id.* at pp. 1994-1995.) In doing so, the Supreme Court observed there was consensus in the medical community that the standard error of measurement ("SEM") was a "statistical fact"; the medical community that designed, administered and interpreted IQ tests had long agreed that test scores should be read as a *range* rather than a fixed score. (*Id.* at p. 1995.) The Supreme Court stated, "The clinical definitions of intellectual disability, which take into account

that IQ scores represent a range, not a fixed number, were a fundamental premise of *Atkins*." (*Id.* at p. 1999.)

In *Atkins*, the Supreme Court had stated that "[t]he statutory definitions of mental retardation are not identical, but generally conform to the clinical definitions set forth in fn. 3." (*Atkins*, *supra*, 536 U.S. at p. 317, fn. 22.) However, the Supreme Court "'le[ft] to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.' [Citation.]" (*Id.* at p. 317.) In *Hall*, the Supreme Court observed that the States do not have complete autonomy to define intellectual disability because such power would render the decision in *Atkins* a nullity. (*Hall*, *supra*, 134 S.Ct. at p. 1999.) Instead it stated, "This Court reads *Atkins* to provide substantial guidance on the definition of intellectual disability." (*Ibid.*)

Throughout its opinion, the Supreme Court in *Hall* referenced the 2012 AAIDD Manual (11th edition) and the DSM-V (American Psychiatric Association, Diagnostic and Statistical Manual (5th Ed. 2013)). The Supreme Court explained, "the legal determination of intellectual disability is distinct from a medical diagnosis, but it is informed by the medical community's diagnostic framework. *Atkins* itself points to the diagnostic criteria employed by psychiatric professionals. And the professional community's teachings are of particular help in this case, *where no alternative definition of intellectual disability is presented* and where this Court and the States have placed substantial reliance on the expertise of the medical profession." (*Hall*, *supra*, 134 S.Ct. at p. 2000, emphasis added.) In other words, the Court did not proclaim that States must use any particular diagnostic criteria for significantly subaverage general intelligence function or adaptive behavior impairment. Nothing in the *Hall* decision mandates that the definition of "adaptive behavior" set forth in the most recent manuals for the APA and AAIDD professional associations

must dictate the criteria used by California. *Hall* says the definitions stated in footnote 3 of *Atkins* provide "substantial guidance" for the states, not that those definitions should not be used to determine whether a criminal defendant is ineligible for execution due to mental retardation.

Rather, the more recent decision in *Brumfield v. Cain* (2015) 135 S.Ct. 2269, reiterates that California may retain, without running afoul of the Constitution, the assessment criteria endorsed by the legislative history of section 1376 that expressly referenced the definitions set forth in *Atkins* footnote 3 (DSM-IV / 1992 AAMR). There, the Supreme Court observed that the Louisiana Supreme Court had described three separate sets of criteria that may be utilized in assessing adaptive impairment. (*Brumfield v. Cain, supra*, 135 S.Ct. at p. 2279.) Two of the sets of criteria were derived from the DSM-IV and the 1992 AAMR. (*Id.* at p. 2279, fn. 6.) The third set of criteria was set forth by a former Louisiana statute and required "substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) Understanding and use of language, (iii) Learning, (iv) Mobility, (v) Self-direction, (vi) Capacity for independent living." (*Id.* at p. 2279.) The Supreme Court utilized this third set of criteria (on the ground it was most favorable to the State) to evaluate, under the federal habeas statutes, whether the state record contained sufficient evidence to raise a question whether the petitioner met the criteria for adaptive impairment. (*Ibid.*) In other words, in *Brumfield*, the Supreme Court implicitly found it permissible for Louisiana to use its own test for assessing adaptive behavior even if different than the criteria recited in *Atkins* footnote 3 or the most recent DSM-V or AAIDD guidelines. Nor did the Supreme Court suggest that it would be inappropriate for a state to use either set of criteria in *Atkins* footnote 3 to assess intellectual disability. Accordingly, the practice in *Brumfield* affirms that California may use the "definitions" set forth in

Atkins footnote 3 rather than more recent articulations authored by the APA or AAIDD.

As noted above, the California Legislature intended the assessment of adaptive behavior impairment under section 1376 conducted by juries and courts to be based upon the definitions provided in *Atkins* footnote 3. Maintaining the use of the definitions in *Atkins* footnote 3 has the advantage of keeping consistency between defendants and continuity over time. It avoids litigation about other definitions or criteria employed in the medical community now and in the future. It avoids possible repetitive litigation by the same defendant due to changes in diagnostic criteria that have no constitutional implications. In any event, *Hall* does not answer whether California permits the use of criteria different than outlined in *Atkins* footnote 3.

Ultimately, using either the 2010 AAIDD criteria for adaptive behavior impairment or those in *Atkins* footnote 3, respondent takes exception to the Referee's bases for concluding petitioner suffers significantly subaverage general intellectual function and concurrent adaptive behavior deficits under the 2010 AAIDD definition. (See Resp. Merits Brf. at pp. 99-130; Resp. Reply Brf. at pp. 27-33.) While Petitioner has argued that testimony summarized in the Report or gleaned from Dr. Khazanov's hearing testimony also qualify under other categories of the DSM-IV or AAMR or other "subcategories" of the three domains in the AAIDD (Pet. Reply Brf. at pp. 21-30), the Referee had no basis upon which to make such findings and did not do so.[2] In addressing adaptive behavior

---

[2] The Referee recited that Dr. Khazanov opined that petitioner "demonstrated severe deficits in the conceptual skills area which in her view satisfied the adaptive behavior prong for mental retardation." (Report at p. 21.) The Referee further recited that "because [Dr. Khazanov]'s tests and interviews of petitioner revealed such severe deficits in reading,

(continued...)

impairments, the Referee summarized the testimony and arguments it found relevant to its ultimate finding, which specified the conceptual domain. (Report at pp. 21-25.) The Referee selected the 2010 AAIDD criteria, and no expert opined that any adaptive behavior impairment other than one falling within the "conceptual skills" domain was satisfied.

This Court should conclude that petitioner failed to meet his burden to demonstrate significantly subaverage intellectual function existing concurrently with deficits in adaptive behavior and manifested before he was 18 years old.

II. CONSIDERATION OF MEASUREMENT DEFICIENCIES INHERENT IN THE IQ TESTING INSTRUMENTS DUE TO NORMING PRACTICES AND "SOCIOECONOMIC FACTORS" EXPLAINING THE SCORE DISTRIBUTIONS DOES NOT CONSTITUTE INVIDIOUS RACIAL DISCRIMINATION

Petitioner asks this Court to hold that no adjustment to IQ scores may be constitutionally made on the basis of the test subject's racial/ethnical background. Petitioner postulates that "this Court 'deferred ruling' on Dr. Hinkin's 'ethnic correction' testimony in *Champion*"[3] and, in this case, should address the question and find any such adjustment to be unconstitutional. (Pet. Supp. Brf. at pp. 5-12.) At the outset, *Champion* did not present or defer the constitutional question now posed. However, it does not violate the Constitution to consider norming practices and the socioeconomic factors that explain score distributions in pre-modern tests when assessing the overall significance and reliability of a specific IQ test

---

(...continued)
writing, language and money concepts ... she deemed it unnecessary to go further to establish the adaptive behavior prong for mental retardation." (Report at p. 22.)

[3] *In re Champion* (2014) 58 Cal.4th 965.

score as part of the broad assessment undertaken to assess petitioner's general intellectual functioning.

Initially, in *Champion*, this Court did not "defer" ruling on the appropriateness of adjusting IQ scores due to racial or ethnic background or socioeconomic factors. (See *Champion*, *supra*, 58 Cal.4th at pp. 66-68.) Mental retardation was not at issue. At the evidentiary hearing, petitioner Champion attempted to show that he suffered "neuropsychological dysfunction" at the time of the charged murders based upon the expert's testimony that the discrepancy in Champion's 1997 performance and verbal IQ scores (74 performance and 92 verbal) evidenced brain dysfunction. (*Id.* at pp. 66-67.) Among other contentions raised by both parties about the Referee's finding that Champion did not suffer neuropsychological impairments, the Attorney General disputed the expert's failure to use ethnically corrected norms. (*Id.* at p. 68.) This Court concluded that it did not have to resolve any of the raised disputes because "[it] had not asked the referee to decide petitioner was neuropsychologically impaired at the time of his capital trial, and the answer to that question does not assist us in deciding whether Defense Counsel Skyers competently assisted him at the penalty phase of trial." (*Id.* at p. 989.)

Second, as used by the experts at the evidentiary hearing and by the parties in their prior briefing, the term "socioeconomic factors" described the conditions that might explain measurement discrepancies for IQ tests normed prior to approximately 2002. Both Dr. Khazanov (petitioner's expert) and Dr. Hinkin (respondent's expert) testified that in the decades that petitioner was tested, African-American children scored 10 to 15 points lower than the children on which the tests were normed. (See, e.g., 8RHT 1405-1407; 12RHT 2011.) Dr. Khazanov testified that discrepancies in scores among populations persisted to a lesser extent even in tests normed between 1972 and 2002. (9RHT 1582-1586.) Dr. Michael Maloney, who

evaluated petitioner in 1984 and spent decades evaluating criminal defendants in Los Angeles County, testified this discrepancy could be higher than 15 points for a particular individual who did not fit the norming parameters for a test without quantifying a number for petitioner (11RHT 1946-1951) and that norming problems persisted in the WAIS-R (1981) given in 1984. (10RHT 1728-35; 11RHT 1780, 1879-1880.)[4] Both Dr. Hinkin and Dr. Khazanov opined that the historical discrepancies in test performance were not due to anything genetically or intrinsically related to race but to socioeconomic factors. (8RHT 1399-1401; 12RHT 2011.) Petitioner essentially acknowledges that historical test results are fallible and unreliable in assessing the "true" general intellectual functioning of individuals outside the group on which the tests were normed: "It is true that the average scores of people of a particular race [fn] or other sub-groups may deviate on the average from the norm for a variety of reasons[,] but those reasons are race-neutral." (Pet. Supp. Brf. at p. 8.)

---

[4] The two tests administered to petitioner before age 18 that were designed for individual administration (the Stanford-Binet L and the WISC –"Wechsler Intelligence Scale for Children") are discussed in detail in a case discussed by the experts at the hearing; the case illustrates the discrepancies in raw scores and discusses the sampling populations upon which the Stanford-Binet and WISC tests were normed. (See *Larry P. v. Riles* (N.D. Cal. 1979) 495 F.Supp. 926, 954-959.) In November 1959, petitioner (then age seven) was administered the Stanford-Binet Form L, a test restandardized in 1937 on a population of 3,000 white school children. (See *id.* at p. 957, fn. 64.) In May 1963, petitioner (age 10) was administered the WISC, a test normed in 1949 on a sample of 2,200 white children. (*Ibid.*) Dr. David Wechsler, who developed the WISC, recognized the problem of cultural bias and made the following pronouncement about the WISC test taken by petitioner: "[O]ur norms cannot be used for the colored population of the United States. Though we have tested a large number of colored persons, our standardization is based upon white subjects only." (*Ibid.*; see also Pet. EH Exh. 23 at p. 10 [stating WISC taken by petitioner at age 10 was normed in 1949].)

Knowing that the tests individually administered to petitioner before age 18 were normed on a sample population of white children, the parties dispute what possible inferences should be drawn about petitioner's test results. Dr. Hinkin opined that the assessment of the significance of petitioner's pre-modern IQ scores should consider the error potential based upon socioeconomic factors. (12RHT 2011-2016.) Nevertheless, Dr. Hinkin did not "adjust" petitioner's IQ score on any test based upon his race because assessment of IQ scores requires an individualized, rather than wholesale, assessment. But putting aside those considerations, Dr. Hinkin testified that petitioner's unadjusted IQ scores on eight or nine of the eleven tests administered before petitioner was 18 years old were above the range consistent with mental retardation. (12RHT 1988-1989, 2026-2027.) An array of factors could cause an individual to perform worse on an IQ test than his "true" level of intellect, but the reverse was not true: "You can't do better. If someone is mentally retarded, you're not going to see scores as 89 on the Kuhlmann-Anderson. Or even when he was 16, that non-verbal I.Q. of 99 on the Thurstone Primary Mental Abilities S.R.A." (12RHT 1989-1990.) Dr. Hinkin also opined that petitioner's illiteracy negatively impacted and explained the decrease in his scores over time. (12RHT 1992-1994, 2000-2006.) Dr. Maloney's assessment of petitioner's scores – including the difference between the performance and verbal component scores – was consistent with that postulated by Dr. Hinkin. (11RHT 1936-1937.)

Recognition that pre-modern IQ tests produced lower scores on average for African-American subjects than the Caucasian populations on which the tests were normed is not invidious racial classification or discrimination. Petitioner argues that considering socioeconomic factors or historic performance differentials on IQ tests will result in racial discrimination–that for death row inmates "with the same IQ," African-

American defendants will be executed while Caucasians will not. (Pet. Supp. Brf. at pp. 8-9.) Petitioner's argument inappropriately "takes an IQ score as final and conclusive evidence of a defendant's intellectual capacity, when experts in the field would consider other evidence." (*Hall*, *supra*, 134 S.Ct. at p. 1995.) A person's IQ score alone is never sufficient to determine mental retardation. California law as set forth in section 1376 and the decisions of this Court both preclude such use. It is inevitable and entirely race-neutral for defendants with the same IQ score to be diagnosed differently and treated differently based upon their dissimilar situations. In this case, the appropriate context to examine petitioner's pre-18 IQ scores includes recognition of the deficiencies inherent in these tests and the probability that petitioner's WISC score of 70 and his earlier Stanford-Binet L score of 83 underestimated his general intellectual functioning.

The above discussion is relevant to two areas previously briefed by the parties. First, respondent took exception to the Referee's decision not to consider petitioner's 1959 Stanford-Binet L full scale IQ score in assessing petitioner's general intellectual functioning due to a misunderstanding of the test's "bias" and reliability. (Resp. Merits Brf. at pp. 103-109; Resp. Reply Brf. at pp. 20-23; Pet. Merits Brf. at pp. 19-20; Pet. Reply Brf. at pp. 35-36.) Respondent also took exception to the Referee's decision not to consider socioeconomic factors in determining whether petitioner's IQ scores reflected his general intellectual function. (See Resp. Merits Brf. at pp. 109-114; Resp. Reply Brf. at pp. 22-23; Pet. Merits Brf. at p. 21; Pet. Reply Brf. at pp. 39-41.) The specific portion of the Report stated: "It is impossible to know how much, if any, adjustment should be made in petitioner's IQ scores for socioeconomic factors. In light of the AAIDD's recent pronouncement that adjustment of IQ scores for such factors should not be made, the Referee declines to make any adjustment to the scores." (Report at p. 19.) Essentially, the Referee chose

to entirely exclude the Stanford-Binet score from the pertinent inquiry of mental retardation due to testimony about that test's norming population, while it declined to consider in any respect the same problems inherent in petitioner's 1963 WISC and 1984 WAIS-R tests. Those findings should not be accepted by this Court.

Petitioner previously asserted that the Referee's decision not to consider "socioeconomic factors" was appropriate because the WAIS-III administered by Dr. Khazanov in 2003 was properly normed and reliable. (See Pet. Reply Brf. at pp. 40-41.) The proper norming of this modern test does not refute the universal and undisputed hearing evidence that the tests administered to petitioner during the years before he turned 18 (including the WISC and the Stanford-Binet L) were normed on a different population demographic (Caucasian children) and have been shown to produce significantly lower scores in African-American test subjects during the historical periods in which those tests were utilized.

Petitioner re-argues that his IQ scores are explained by Dr. Khazanov's testimony that her testing suggested brain dysfunction due to diffused and localized damage in the front and parietal lobes resulting from in-utero alcohol exposure, possible genetic loading, and malnutrition. (Pet. Supp. Brf. at pp. 11-12.) The referee declined to make any findings that Dr. Khazanov's assessments, testing or opinions about these matters were legitimate. (Report at pp. 21-22 & fn. 34.) Petitioner has previously argued the Referee's decision not to make a finding about brain damage was correct and did not take exception. (Pet. Reply Brf. at pp. 41-43.)

The referee declined to resolve the key dispute about the reason for the precipitous drop in IQ test results from the 83 on the Stanford-Binet L (age seven) to the 70 scored on the WISC (days before his 11th birthday and weeks before he dropped out of school). Dr. Khazanov offered her opinions about brain damage as an explanation. But Dr. Hinkin, the board

certified clinical neuropsychologist testified, lateralization of the brain occurs before age seven and not around age 10 to 11 as Dr. Khazanov (who was not board certified) opined. As both Dr. Hinkin and Dr. Maloney testified, the precipitous drop in scores did not reflect intellectual disability resulting from brain damage but was better explained by socioeconomic factors, lack of basic knowledge needed to do well on IQ tests, and his lack of motivation for school and test taking. (Resp. Merits Brf. at pp. 109-119; Reply Brf. at pp. 20-28.) To the extent petitioner now attempts to point to different or newer out-of-record articles to attack Dr. Hinkin's testimony (Pet. Supp. Brf. at pp. 11-12), they were not considered by the Referee and should be rejected as entirely speculative in application to petitioner.

CONCLUSION

For the reasons set forth herein and more fully briefed in respondent's Merits Brief and Reply Brief, this Court should conclude that petitioner failed to meet his burden to demonstrate he suffered intellectual disability as defined by section 1376 disqualifying him from execution under the *Atkins* rule.

Dated: July 17, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
JAIME L. FUSTER
Deputy Attorney General

MARGARET E. MAXWELL
Supervising Deputy Attorney General
Attorneys for Respondent

MEM:ez
LA2003XH0016
51837069.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S SUPPLEMENTAL BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 3,585 words.

Dated: July 17, 2015

KAMALA D. HARRIS
Attorney General of California

Margaret E Maxwell

MARGARET E. MAXWELL
Supervising Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE

Case Name: **In re Robert Lewis, Jr. On Habeas Corpus** **CAPITAL CASE**

Case No.: **S117235**

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 17, 2015**, I served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF ON THE MERITS** 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:

ROBERT M. SANGER
ATTORNEY AT LAW
SANGER SWYSEN & DUNKLE
125 EAST DE LA GUERRA STREET, SUITE 102
SANTA BARBARA, CA 93101

THE HONORABLE ROBERT J. PERRY, JUDGE
LOS ANGELES COUNTY SUPERIOR COURT
111 N. HILL STREET
LOS ANGELES, CA 90012

ALLEN SUMNER
SENIOR DEPUTY LEGAL AFFAIRS SECRETARY
GOVERNOR'S OFFICE
STATE CAPITOL, FIRST FLOOR
SACRAMENTO, CA 95814

CALIFORNIA APPELLATE PROJECT (SF)
101 SECOND STREET, SUITE 600
SAN FRANCISCO, CA 94105-3647

BRIAN KELBERG
DEPUTY DISTRICT ATTORNEY
COURTESY COPY BY EMAIL

On **July 17, 2015**, I caused original and 8 copies of the **RESPONDENT'S SUPPLEMENTAL BRIEF ON THE MERITS** in this case to be delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by **Federal Express, Tracking # 8055-1567-5634**.

Case Name: **In re Robert Lewis, Jr. On Habeas Corpus** **CAPITAL CASE**

Case No.: **S117235**

On **July 17, 2015**, I caused one electronic copy of the **RESPONDENT'S SUPPLEMENTAL BRIEF ON THE MERITS** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

On **July 17, 2015**, I caused courtesy copy of the **RESPONDENT'S SUPPLEMENTAL BRIEF ON THE MERITS** in this case to the California Court of Appeal.

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 17, 2015**, at Los Angeles, California.

Erlinda Zulueta
Declarant

Erlinda Zulueta
Signature

MEM:es
LA2003XH0016
51836530.doc