IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
Plaintiff and Appellant,	)	Case No. S223763
vs.	)	
MARIO ALBERTO GONZALEZ,	)	
Defendant and Respondent.	)	

Fourth Appellate District, Division Two, Case No. E059859
Riverside County Superior Court, Case No. INF1300854
Honorable William S. Lebov, Judge

RESPONDENT'S REPLY BRIEF ON THE MERITS

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By appointment of the California Supreme Court

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RESPONDENT'S REPLY BRIEF ON THE MERITS

Respondent, Mario Gonzalez, respectfully submits the following in reply to Appellant's Answer Brief on the Merits. ("ABM.") The failure to respond to any particular argument should not be construed as a concession that appellant's position is accurate. It merely reflects respondent's view that the issue was adequately addressed in Respondent's Opening Brief on the Merits. ("OBM.")

INTRODUCTION

Despite appellant's assertions, the issue in the present case is a simple one: Can a mere gesture alone, unaccompanied by any verbal, or oral, statement, qualify as a criminal threat. Looking to the plain language of the statute, as well as the statute's

legislative history, it is clear that it cannot. In fact, both parties agree that "words" are necessary to commit a criminal threat.

Without any citation to precedent, appellant argues that words "can be spoken without sound." (ABM, p. 11.) Such is clearly not the case. The common sense meaning of verbal as used in the statute, not to mention the dictionary definition, is oral.

In the present case, no words were ever spoken by Mr. Gonzalez or anyone else sitting at his table for that matter. While appellant continues to misstate the facts in an attempt to make the interaction that occurred appear more than it was – Mr. Gonzalez never made a throat slashing sign nor did he simulate a gun with his hand at the same time as the driver or as the driver drove around to the front of the restaurant as appellant claims(ABM, p. 5; CT: 35) – such attempts fail to establish that a criminal threat was committed in this case. A criminal threat is a threat to commit a crime that will result in death or great bodily injury. (Pen. Code, § 422.)[1] Here, no such threat was made. Although appellant claims that Mr. Gonzalez "communicated his anger," even assuming that was true, communicating anger is not a crime. (ABM, p. 3.) The evidence fails to show Mr. Gonzalez verbally communicated any specific threat to commit a crime that would result in death or great bodily injury to anyone. Thus, the court of appeal's opinion must be reversed.

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

ARGUMENT

I.

SECTION 422 UNAMBIGUOUSLY REQUIRES THAT A CRIMINAL THREAT BE COMMUNICATED WITH ORAL OR WRITTEN WORDS.

Appellant agrees that the word "verbal" as used in section 422 means "consisting of words." (ABM, p 11.) Appellant argues, however, that a "word can be spoken without sound" (ABM, p. 11) and that "verbal communication can be effectuated without the emission of sound," (ABM, p. 13) but provides no authority these propositions. To the contrary, the definition of "word" proves otherwise.

According to Merriam-Webster, the definition of "word" includes "something that is said," "a speech sound or series of speech sounds that symbolizes and communicates a meaning," and "a written or printed character or combination of characters representing a spoken word." ("word." *Merriam-Webster.com*. 2011. http://www.merriam-webster.com (18 August 2015).) Additionally, Dictionary.com defines "word" as "a unit of language, consisting of one or more spoken sounds or their written representation, that functions as a principal carrier of meaning." ("word." *Dictionary.com*, 2015. http://www.di ctionary.com (18 August 2015).) Neither of these definitions includes non-verbal conduct or gestures.

The purpose of statutory interpretation is to ascertain and effectuate legislative intent. (*Fujitsu IT Holdings, Inc. v. Franchise Tax Bd.* (App. 1 Dist. 2004) 120 Cal.App.4th 459, 478.) "The first step in determining that intent is to scrutinize the

actual words of the statute, giving them a *plain and common sense meaning*." (*Ibid*, emphasis added.; see also *People v. Cochran* (2002) 28 Cal.4th 396, 401.) The "common sense" meaning of the word verbal means oral, especially in the context of a courtroom setting. For example, when the a trial court asks a witness on the stand to give a "verbal response" to the attorneys' questions, the trial court is asking the witness to give an oral response, not to shrug his or her shoulders or shake or nod his or her head. While a shrug of the shoulders *may* convey a meaning such as "I don't know," it is simply not a verbal response. Thus, both the common sense meaning of the word verbal as well as the dictionary definition demonstrate that a statement made "verbally" is one that is made orally and not by gesture alone.

Appellant's reference to and reliance on American Sign Language is misplaced. While individuals utilizing American Sign Language use gestures to communicate, these gestures fail to fall under section 422 because they are neither orally spoken or written as required by the plain and common sense meaning of the statute.[2] Moreover, Mr. Gonzalez was not using American Sign Language and, in any event, his gesture still fails to satisfy the requirements of section 422. The gestures in American Sign Language are necessarily assigned a particular meaning. The gesture

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[2]. Should the Legislature determine that excluding American Sign Language from the criminal threats statute was not what it intended, it can take appropriate steps to remedy the statute. "'Courts must take a statute as they find it, and if its operation results in inequality or hardship in some cases, the remedy therefore lies with the legislative authority.'" (*Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1697.)

Mr. Gonzalez used was not assigned any particular meaning. Additionally, the fact that making a "finger gun" means "gun" in American Sign Language is irrelevant. Making a hand sign for gun is simply akin to saying the word "gun" and is not in and of itself a threat to commit a crime.

In reaching the conclusion that a "word can be spoken without sound" appellant repeatedly ignores the fact that a criminal threat not only requires words, but words that specifically convey an intent to commit a crime that will result in death or great bodily injury. (§ 422.) A gesture unaccompanied by words does not specifically communicate an intent to commit such a crime. Moreover, the fact that an individual may be fearful of the gesture does not elevate the gesture to the level of a criminal threat.

The facts of the present case illustrate exactly why a verbal (oral) or written statement is required to commit a criminal threat. As demonstrated by the facts of the present case, a gesture alone fails to convey a specific threat to commit a crime as required by the statute. Mr. Gonzalez "stared" at the officers (ABM, p. 4), flashed a gang sign (ABM, p. 4), and pointed his finger to the sky, perhaps simulating a gun (ABM, p. 5.). However, he never verbally communicated any specific threat to kill or cause great bodily injury to anyone. Even appellant cannot conclude that Mr. Gonzalez, by his gestures alone, communicated an intent to commit a crime that would result in death or great bodily injury. Appellant simply states that

"Respondent's gestures communicated his anger. . ." (ABM, p. 3.) Communicating anger is not a crime. Verbally communicating a intent to commit a crime that will result in death or great bodily injury is. As appellant's inability to point to a particular threat demonstrates, such a communication never occurred in the present case.

The words the Legislature chooses to include in a statute are "the best indicators of its intent." (*Hale v. Superior Court* (2014) 225 Cal.App.4th 268, 275, citing *People v. Ramirez* (2010) 184 Cal.App.4th 1233, 1238.) Here, the Legislature chose to use the words "verbally," "in writing," and "by means of an electronic communication device" to modify and explain how a threatening statement must be made. Thus, looking to the plain language of the statute, section 422 is unambiguous and prohibits threatening statements made by the oral expression of words, the written expression of words, or words otherwise communicated through electronic communication device and not by non-auditory gestures alone.

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II.

THE LEGISLATIVE HISTORY OF SECTION 422 DEMONSTRATES THAT ORAL OR WRITTEN WORDS ARE REQUIRED TO VIOLATE THE STATUTE.

As explained above, section 422 unambiguously requires that a criminal threat be communicated with oral or written words. In addition, the legislative history of section 422 makes clear that oral or written words are required to violate the statute.

The requirement that a criminal threat be made orally or in writing was added by amendment to section 422 in 1998. (Sen. Bill No. 1796 (1997-1998 Reg. Sess.) §3; Stats. 1998, ch. 825, §3.) The purpose of the amendment was to "clarify that [section 422] applies to threatening *statements made verbally, in writing, or by means of an electronic communication device*." (*Ibid.*, emphasis added.) Prior to the amendment, the statute simply prohibited any "statement" made to be taken as a threat. (*Ibid.*) A "statement" is not necessarily limited to verbal or written communications. For example, as defined by Evidence Code section 225, a "statement" means any "oral or written verbal expression" *or* "nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression." As explained fully above, by adding the modifying language "verbally, in writing, or by means of an electronic communication device" after the word "statement" in its 1998 amendment, the legislature made clear its intent to criminalize only those threatening

statements made orally, in writing, or by electronic communication and not any nonverbal statement or gesture.

Appellant fails to acknowledge that the 1998 amendment to section 422 has considerable significance. Generally speaking, "a substantial change in the language of a statute ... by an amendment indicates an intention to change its meaning." (*Mosk v. Superior Court* (1979) 25 Cal.3d 474, 493.) Moreover, "it is presumed the Legislature made changes in wording and phraseology deliberately . . . and intended different meanings when using different words." (*In re Marriage of Duffy* (2001) 91 Cal.App.4th 923, 938, internal citations omitted.) The change in language in the criminal threats statute was not subtle. To the contrary, the change was significant. By changing the specific language of the statute and by using words to modify what type of statement would violate the statute – namely statements made verbally, in writing, or by means of electronic communication device – the Legislature indicated its intention to change the definition of statement as applied to the criminal threats statute. The Legislature made clear with this amendment that the definition of statement no longer applied to nonverbal conduct.

The Street Terrorism Enforcement and Prevention Act ("STEP Act") does nothing to change the above analysis. The STEP Act was enacted by the Legislature in 1988 as part of Senate Bill No. 1555. (Stats. 1988, ch. 1256.) It was the intent of

the Legislature "in enacting this chapter to seek the eradication of criminal activity by street gangs." (§ 186.21.)

The STEP Act does not criminalize mere gang membership. (*People v. Castenada* (2000) 23 Cal.4th 743, 750.) To the contrary, the STEP Act provides for increased punishment for active gang participants who commit, or help to commit, felonies for the benefit of their criminal street gang. (§ 186.22, subd., (a) and (b)). The fact that section 422 was added as part of the STEP Act did not change the elements of section 422 or make the elements different for gang members than for non-gang members. While an active gang participant may receive an increased punishment under the STEP Act if he commits a criminal threat for the benefit of his street gang, to be convicted of a criminal threat the prosecution must still present evidence that he committed each and every element of the underlying offense. Thus, even after passage of the STEP Act, an individual cannot be convicted of criminal threats under section 422 for simply making a non-verbal hand gesture.

There is no doubt that the purpose of the STEP Act was to combat gang violence. However, as explained above, the fact that a gang member uses a non-verbal hand sign does not in and of itself elevate such conduct to the level of a criminal threat. Moreover, what appellant repeatedly fails to acknowledge is that the 1998 amendment to section 422 eliminating the possibility of committing a criminal threat by non-verbal conduct such as a hand gesture alone was enacted ten years after

Senate Bill No. 1555 added the STEP Act. Thus, despite the existence of the STEP Act and the legislature's obvious desire in 1988 to deter gang violence and street terrorism, the legislature still amended section 422 to include only those statements that are made verbally, in writing, or by electronic communication and not to include mere gang signs.

Appellant's reliance on *People v. Mendoza* (1997) 59 Cal.App.4th 1333 is misplaced. Mendoza was convicted of making a terrorist threat and dissuading a witness. (*Id.*, at p. 1337.) He appealed, contending there was insufficient evidence to support either conviction. (*Ibid.*) The court of appeal disagreed.

In reaching its decision, the majority noted that Mendoza used *words* – namely, "you fucked up my brother's testimony. I'm going to talk to some guys from Happy Town" – to convey a threat to commit a crime that would result in death or great bodily injury to the victim. (*People v. Mendoza, supra,* 59 Cal.App.4th at p. 1340.) The issue in *Mendoza* was not whether a threat could be communicated without words, but whether the words spoken by Mendoza were sufficient to convey a threat. Thus, the statement in the concurring opinion that "section 422 does not require the threat be literal or even verbal" is simply dicta and has no precedential value. (*People v. Stewart* (1985) 171 Cal.App.3d 59, 65 [no opinion has value as a precedent on points as to which there is no agreement of a majority of the court]; *People v. Ceballos* (1974) 12 Cal.3d 470, 483.)

Moreover, *Mendoza* was decided prior to the 1998 amendment to section 422. As such, the statute at issue in *Mendoza* prohibited any "statement" made to be taken as a threat. The word "statement" had not yet been amended and modified with the terms "verbal,""written," or "by electronic communication device." Thus, any conclusion in *Mendoza* that a threat need not be "verbal" is clearly inapplicable to section 422 as it stands today.

Appellant submits that Mr. Gonzalez' reliance on *People v. Franz* (2001) 88 Cal.App.4th 1426 is misplaced. Not so. While Mr. Gonzalez disagrees with *Franz* that the word "verbal" as used in the statute is ambiguous, *Franz* helps illustrate (1) that the legislature knows how to criminalize conduct and (2) that the legislature chose not to when it amended section 422.

The *Franz* court understood what appellant apparently does not: that the principles of grammatical construction have serious implications on the way words and phrases are to be interpreted. The addition by the legislature of the adverb "verbally" after "statement" dramatically changed how a threatening statement was to be made. A "statement" no longer includes conduct intended "as a substitute for oral or written verbal expression," as defined in Evidence Code section 225. (*People v. Franz, supra*, 88 Cal.App.4th at p. 1441.) To the contrary, adding the word "verbally" after the word "statement" demonstrates that non-verbal conduct, or gestures, will not violate the statute. To this end *Franz* explained:

> [W]hile it is true that Evidence Code section 225 provides that a "statement" may mean nonverbal conduct, it is equally true that the Evidence Code applies, "[e]xcept as otherwise provided by statute...." Here, as pertinent, section 422 expressly provides that the "statement" must be "made verbally." The Penal Code definition controls. Indeed, because Evidence Code section 225 expressly refers to "nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression," the Evidence Code statute further demonstrates that the Legislature knows how to define nonverbal conduct, as a means of communication, when it wants to. (*People v. Franz*, *supra*, 88 Cal.App.4th at p. 1441.)

Appellant also criticizes Mr. Gonzalez' analysis of section 76. However, comparing section 422 to section 76 demonstrates the same point demonstrated in *Franz,* namely that the legislature knows how to criminalize conduct but chose not to do so when it amended section 422.

Section 76 punishes criminal threats made to public officials. \Section 76, subdivision (a) provides:

> Every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense...

Section 76, subdivision (b)(5) defines "threat" as "a verbal or written threat or a threat implied by a pattern of *conduct* or a combination of verbal or written statements and *conduct* made with the intent and the apparent ability to carry out the threat so as to

cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family." (Emphasis added.) Therefore, if the Legislature intended for section 422 to cover nonverbal conduct they certainly knew how penalize such conduct. Moreover, "it is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." (*In re Marriage of Corman* (1997) 59 Cal.App.4th 1492, 1499, quoting *In re Jose A.* (1992) 5 Cal.App.4th 697, 701–702, 7 Cal.Rptr.2d 44.) Thus, by failing to specifically include nonverbal conduct in their amendment to section 422 while specifically including nonverbal conduct in section 76 – a similar if not nearly identical statute – the Legislature demonstrated it intended *not* to criminalize mere conduct as opposed to oral or written statements.

The exclusion of conduct or gestures from section 422 makes perfect sense. A gesture can be interpreted in any number of ways. In the instant case, the police officers viewed Mr. Gonzalez' hand gesture as a threat. However, the same gesture may very well have been viewed differently if seen by a different officer, civilian, or gang member. Without words, the gesture had no particular meaning and failed to specifically convey an intent to commit a crime that would result in death or great bodily injury.

Appellant claims they are not asking the court to "include conduct in section 422." (ABM, p. 14.) However, that is exactly what appellant is asking for. Appellant states: "It is only logical that an act of intimidation such as this one, where the *conduct* of respondent includes meaningful hand signs accompanied by intentionally intimidating *conduct* does equate to a verbal statement." (ABM, p. 18, emphasis added.) Appellant is, therefore, asking this Court to conclude that Mr. Gonzalez' conduct in flashing a gang sign and pointing his "finger gun" to the sky was a criminal threat. However, if conduct is not covered by the statute, as appellant acknowledges (ABM, p. 14), no such conclusion can be made.

Mr. Gonzalez never communicated any words to any of the individuals involved in this case. Instead, he engaged in conduct, by the making of a hand gesture, that the officers perceived to be threatening. The fact that the officers witnessed a hand gesture that they subsequently assigned a meaning to does not mean a criminal threat was committed. A specific threat to commit a crime that will result in death or bodily injury must be communicated with words. Here, that simply did not occur.

III.

THE RULE OF LENITY IS APPLICABLE.

As discussed above, Mr. Gonzalez submits the language used in section 422 is not ambiguous. However, if the language is ambiguous, any ambiguity must be

construed in his favor under the rule of lenity. The fact that the statute excludes conduct is an issue for the Legislature, and not the courts, to correct.

The "rule of lenity" is a due process requirement that ambiguity in a criminal statute be interpreted in the way most favorable to the accused. For over a century, this Court has consistently applied the rule announced in *Ex parte Rosenheim* (1890) 83 Cal. 388, 391 that "the defendant [in a criminal case] is entitled to the benefit of every reasonable doubt ... as to the true interpretation of words or the construction of language used in a statute ...." (See, e.g., *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529 - 530, fn. omitted; *People v. Overstreet* (1986) 42 Cal.3d 891, 896 (plur. opn.); *Carlos v. Superior Court* (1983) 35 Cal.3d 131, 145-146; *People v. Nichols* (1970) 3 Cal.3d 150, 161 - 162; *Walsh v. Dept. Alcoholic Bev. Control* (1963) 59 Cal.2d 757, 765; *Chessman v. Superior Court* (1958) 50 Cal.2d 835, 843; *People v. Ralph* (1944) 24 Cal.2d 575, 581.) The rule of lenity is of even more venerable application in decisions of the United States Supreme Court. (See *Harrison v. Vose* (1850) 50 U.S. (9 How.) 372, 378 [13 L.Ed.179, 182].) Recently, Justice Scalia stated his understanding of the application of the rule. "The rule of lenity, in my view, prescribes the result when a criminal statute is ambiguous: *The more lenient interpretation must prevail.*" (*United States v. R. L. C.* (1992) 503 U.S. 291, 307-308 [117 L.Ed.2d 559, 574] (conc. opn. of Scalia, J., joined in by Kennedy, J. and Thomas, J.), emphasis added.)

Under the rule of lenity, if there is any ambiguity about the meaning of the word "verbal" it must be decided in favor of Mr. Gonzalez. (See, e.g., *People v. Overstreet, supra,* 42 Cal.3d at p. 896 ["When language which is susceptible of two constructions is used in a penal law, the policy of this state is to construe the statute as favorably to the defendant as its language and the circumstances of its application reasonably permit. The defendant is entitled to the benefit of every reasonable doubt as to the true interpretation of words or the construction of a statute."].) This "rule serves to protect the legislature's exclusive authority to define crimes from judicial encroachment. As a matter of fundamental due process the rule helps to ensure that citizens are given fair warning of conduct punishable as a crime." (*Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631.)

Applying the rule of lenity in this case would not lead to absurd results. Contrary to appellant's assertions, the "end result" to a conclusion that some words, either oral or written, must be communicated in order to commit a criminal threat would not be "that another defendant who commits the exact same conduct as respondent and emits a yell, whoop, or a shush, be held accountable for a violation of section 42, while respondent escapes criminal liability because of the lack of any sound made. . ." (ABM, p. 19.) This assertion is deceptively simplistic and entirely inaccurate. A "yell," "whoop," or "shush" is not a criminal threat. First, while these are all sounds, they are not all words, which as discussed above are required for a

violation of section 422. Second, none of these sounds convey a specific threat to commit a crime that will result in death or great bodily injury. Thus, Mr. Gonzalez is in no way arguing that had he made a "shushing" noise or "whooping" noise that the analysis in this particular case would be any different.

Appellant maintains that the decision in *Franz* was absurd because *Franz* concluded that a noise such as a "sh" was required to violate section 422. (ABM., p. 17.) This interpretation of *Franz* is, again, deceptively simplistic. The *Franz* court concluded that "gestures, unaccompanied by verbal sound, do not qualify as verbal statements under section 422." (*Franz, supra,* 88 Cal.App. 4th at p. 1439.) However, the case involved much more than a "sh." While the court focused its opinion on the final word stated by Franz to the victims in that case – "sh" or "shush" – Franz actually made several threatening verbal statements to the victims in that case. Prior to the incident in question Franz specifically threatened to kill one of the victims. On the day of the incident, Franz repeatedly punched that victim in the face. Franz could also be heard in the background of a 911 call made by one of the victims as he yelled: "I'm not no fucking little kid. I'll fucking kill you, boy! ... (unintelligible) ... You (unintelligible) you mother fucking ... (unintelligible) . . . shit! I'll fuck you up! I don't give a fuck about going back to the pen! I got connections, bro! My family is Mafia! Mafia!" (*Id.,* at p. 1435.) To say the *Franz* case involved only a gesture and a "shush" is misleading. Not only did Franz and the victim have a violent history, but

Franz also specifically told the victim he was going to kill him and that he was not afraid to do so. Thus, when Franz said the word "shush" along with his throat slashing gesture, it was clearly a threat to kill the victims. Again, no such threat was made in the present case.

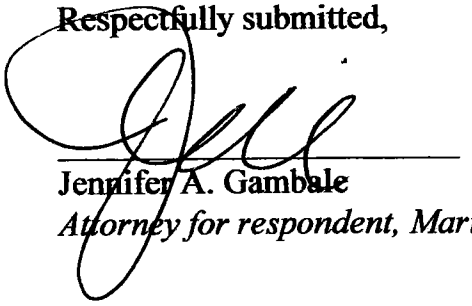
Appellant asserts that in the present case an "unequivocal" threat was communicated. (ABM, p. 18.) However, appellant is unable to state exactly what, if anything, was threatened. Mr. Gonzalez, who was minding his own business until an officer approached his dining table, stared at the officers, flashed a gang sign as he was leaving the restaurant, and made a "finger gun" that he pointed to the sky as the car he was riding in drove away. He *did not*, as appellant mistakenly claims, make any throat slashing gesture or simulate a gun with his hand at the same time as the driver of the car in which he was riding. (ABM, p. 5; CT: 35.) In making those gestures, what crime, if any, was threatened? Was Mr. Gonzalez showing off in front of his friends who were with him at the restaurant? Was he boasting his membership in a gang? Or was he making some sort of criminal threat? From the facts of this case it is impossible to conclude that his conduct unequivocally communicated a threat to commit a specific crime and that such crime would result in death or great bodily injury. As such, the trial court's initial conclusion in this case was correct and the court of appeal's decision should be reversed.

CONCLUSION

For the reasons set forth above, respondent, Mario Gonzalez, respectfully requests that the judgment of the Court of Appeal be reversed.

Dated: September 1, 2015

Respectfully submitted,



Jennifer A. Gambale
Attorney for respondent, Mario Gonzalez

WORD COUNT CERTIFICATE

I hereby certify, under penalty of perjury, the attached Reply Brief on the Merits contains 4,940 words, as determined by the computer program used to prepare this document.

Dated: September 2, 2015

Respectfully submitted,

Jennifer A. Gambale
Attorney for respondent, Mario Gonzalez

PROOF OF SERVICE BY MAIL

I, JENNIFER A. GAMBALE, declare as follows:

I am over the age of 18 years and not a party to this action. My business address is 111 Pacifica, Suite 120, Irvine CA 92618. On September 2, 2015, I served the attached RESPONDENT'S REPLY BRIEF ON THE MERITS (CASE # S223763) by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail, with postage thereon fully prepaid.

Clerk of the Superior Court
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Larsen Justice Center
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Clerk, Court of Appeal
Fourth Appellate District
Division Two
3389 Twelfth Street
Riverside, CA 92501

A Copy was also sent to Mario Gonzalez

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct. Executed this 2nd day of September, 2015.

JENNIFER A. GAMBALE

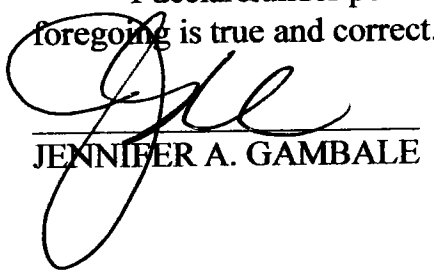
PROOF OF ELECTRONIC SERVICE

Furthermore, I, Jennifer Gambale, declare that on September 2, 2015, at approximately 8:00 a.m., I electronically served from my electronic notification address RESPONDENT'S REPLY BRIEF ON THE MERITS (CASE # S223763) to the following entities and electronic notification addresses and that the transmissions were reported as complete and without error:

APPELLATE DEFENDERS INC, e-service-criminal@adi-sandiego.com

OFFICE OF THE ATTORNEY GENERAL, ADIEService@doj.ca.gov

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct. Executed this 2nd day of September, 2015.



JENNIFER A. GAMBALE