In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellant,

v.

ALEXIS ALEJANDRO FUENTES,

Respondent.

Case No. S219109

Fourth Appellate District, Division Three, Case No. G048563
Orange County Superior Court, Case No. 13NF0928
The Honorable Nicholas S. Thompson, Judge

APPELLANT'S REPLY BRIEF

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVE OETTING
Supervising Deputy Attorney General
LISE JACOBSON
Deputy Attorney General
KRISTEN KINNAIRD CHENELIA
Deputy Attorney General
State Bar No. 225152
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 525-4232
Fax: (619) 645-2271
Email: Kristen.Chenelia@doj.ca.gov
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

As appellant argued in the Opening Brief on the Merits, Penal Code section 186.22, subdivision (g),[1] grants limited authority to strike the punishment on certain gang allegations. The language employed in the statute, specifically the "notwithstanding" clause, was used by the Legislature to preclude application of contrary law such as section 1385. Fuentes responds that section 186.22, subdivision (g), was intended to expand judicial discretion to include the authority to strike the punishment of gang enhancements and was never intended to impact the power to dismiss allegations by section 1385. He argues the "notwithstanding" clause in section 186.22, subdivision (g), does not establish otherwise as the Legislature was on notice and had demonstrated the ability to clearly limit judicial authority when it so intended. Finally, he contends limited judicial authority to dismiss gang enhancements would run afoul of the separation of powers doctrine.

When section 186.22, subdivision (g), was enacted in 1988, a notwithstanding clause was a sufficient indication to demonstrate the legislative intent to limit judicial authority to dismiss. The Legislature also showed its intent by bestowing a limited grant of judicial authority that conflicts with the greater authority to dismiss. In addition, eliminating judicial authority to dismiss gang allegations, but granting the lesser authority to strike the punishment, furthered the Legislature's purpose and goals of the STEP Act by facilitating court findings that are used to combat gang crime. Eliminating judicial authority to dismiss gang allegations does not violate the separation of powers doctrine because it is not contingent on approval by the prosecution.

---

[1] All future undesignated code references are to the Penal Code.

I. SECTION 186.22, SUBDIVISION (G), ELIMINATES A TRIAL COURT'S SECTION 1385 DISCRETION TO DISMISS GANG ALLEGATIONS

The Legislature enacted section 186.22, subdivision (g), as an alternative to dismissing gang allegations under section 1385. Fuentes's response does not address the fact section 186.22, subdivision (g), only applies to two of the three categories of gang allegations, and applying section 1385 would render the Legislature's efforts nugatory. Nor does Fuentes confront the seriousness of gang allegations and the importance of preserving true findings to effectuate the law.

A. Section 186.22, Subdivision (g), Discretion Was Enacted As Part Of The STEP Act To Replace Alternate And Conflicting Authority To Dismiss Gang Enhancements

The language and application of section 186.22, subdivision (g), shows the Legislature intended it to replace the conflicting general authority to dismiss under section 1385, subdivision (a). The Legislature's intent was manifested by employing the notwithstanding clause, limiting this alternate discretion to certain gang allegations, and providing a source of discretion specific to gang allegations that conflicts with the general discretion to dismiss provided in section 1385, subdivision (a). (AOBM at 10-15.) Fuentes responds that section 186.22, subdivision (g), lacks the clear legislative direction to limit statutorily granted section 1385 authority. (RABM at 8-9.) In particular, he argues section 186.22, subdivision (g), includes no "express refutation" of section 1385 and the notwithstanding clause does not control because the statutes do not necessarily conflict. (RABM at 11-12.) Each of these contentions lack merit.

1. The Notwithstanding Clause Clearly Demonstrated The Legislative Intent to Eliminate Section 1385 Discretion To Dismiss Gang Allegations

When section 186.22, subdivision (g), was enacted in 1988, the use of "notwithstanding any other provision of law" was sufficient to declare legislative intent to abrogate other applicable statutes. Specific reference to section 1385 was not required by this Court to preclude its operation and has never been a requirement. (*People v. Thomas* (1992) 4 Cal.4th 206, 211.) Thus, when enacting section 186.22, subdivision (g), the Legislature had no reason to believe anything more was necessary to eliminate the authority to dismiss gang allegations.

Fuentes reasons the Legislature was on notice by this Court's opinions in *People v. Williams* (1981) 30 Cal.3d 470 and *People v. Fritz* (1985) 40 Cal.3d. 227, which directed it to be clear when withdrawing the discretion to dismiss, and the Legislature's response to these opinions showed its ability to do so. However, a closer look at these opinions supports appellant's conclusion that the notwithstanding clause was sufficient to abrogate the authority to dismiss.

The *Williams* decision reviewed this Court's decisions and reiterated the rule of statutory construction that section 1385 permits dismissal unless the Legislature has clearly evidenced a contrary intent. (*People v. Williams, supra,* 30 Cal.3d at p. 482.) However, the death penalty statute at issue in *Williams,* similar to earlier controlling cases, only provided for a particular sentence, and gave no indication the statute sought to limit the discretion to dismiss. (*Id.* at p. 484.) *Williams* also distinguished the death penalty statute and earlier cases from *People v. Tanner* (1979) 24 Cal.3d 514, which found section 1203.06, subdivision (b), precluded the power to dismiss in order to grant probation. (*Tanner, supra,* at p. 519.) The *Tanner* majority considered the mandatory language of section 1203.06,

"Notwithstanding the provisions of Section 1203:. . . Probation shall not be granted to . . . ," and the fact section 1203, subdivision (b), was similar to section 1385. The history of the statute also supported this interpretation because the ability to dismiss use allegations to grant probation would nullify recent legislation. (*Tanner*, *supra*, at pp. 519-521; *Williams, supra*, at pp. 482-485.)

The *Williams* opinion reiterated that the Legislature should make its intent to withdraw section 1385 authority to dismiss clear, but did not inform the Legislature that this required more than the notwithstanding clause used in other statutes and addressed in the *Tanner* opinion. Indeed, the concurring and dissenting opinions in *Tanner* pointed out that the Legislature's use of the phrase "notwithstanding any other provision of law" in other sentencing provisions made it clear it was restricting the power to strike by displacing all other relevant statutes, whereas "notwithstanding the provision of Section 1203" only declared the provisions of section 1203.06 were applicable. (*Tanner, supra* at pp. 532-533, 539, 549.) Notably, the Legislature did not react to the *Williams* opinion, and it was not until 1990 that the electorate adopted section 1385.1[2] and restricted the trial court's power to dismiss special circumstances in response to the *Williams* decision.

This Court reminded the Legislature again to be clear of its intent in *People v. Fritz* (1985) 40 Cal.3d. 227. *Fritz* addressed a court's discretion to strike a serious felony prior under section 1385. Relying on *Williams* and this Court's decisions over the previous 30 years, *Fritz* held the provisions – section 667 and article I, section 28, subdivision (f) – did not

---

[2] Section 1385.1 provides, "Notwithstanding Section 1385 or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive."

contain any express language limiting the discretion to dismiss or that it was drafted with this intention. (*Id.* at pp. 230-231.) Once again, general mandatory language imposing a penalty alone was not enough to limit section 1385 discretion. (*Id.* at p. 231.) However, the *Fritz* opinion did not suggest that "express language referring to section 1385" required more than a notwithstanding clause. The Legislature did respond to *Fritz* the following year by enacting section 1385, subdivision (b)[3].

Again, there was no reason for the Legislature to believe that in order to eliminate section 1385 discretion to dismiss gang allegations it was required to include language beyond a notwithstanding clause. Fuentes also points to the Legislature's subsequent use of "notwithstanding Penal Code section 1385" in numerous statutes. (RABM at 7-9.) While the Legislature used "notwithstanding Penal Code section 1385" in sections 667.61, 667.71, 1022.5, subdivision (c), and 1022.53, subdivision (h), this was not until 1993, 1994, 1997, and 2002. In 1988, the Legislature's use of notwithstanding any other provision of law was sufficient to signal that section 186.22, subdivision (g), prevailed over the discretion to dismiss. There was no reason the Legislature would have been any more specific in this regard in 1988.

2. The Limited Discretion To Strike The Punishment Of Some Gang Allegations In Section 186.22, Subdivision (g), Conflicts With The General Authority To Dismiss In Section 1385

Courts have always recognized that a "notwithstanding" clause is a term of art that declares legislative intent to override contrary law. (*In re Greg F.* (2009) 55 Cal.4th 393, 406.) Here, sections 1385 and 186.22,

---

[3] Section 1385, subdivision (b), provides: "This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667."

subdivision (g), are in direct conflict and the notwithstanding clause controls. Specifically, section 186.22, subdivision (g)'s limited grant of discretion to strike punishment on some gang allegations conflicts with the general authority to dismiss. Fuentes argues statutes should not be read to restrict power unless necessarily inconsistent, and having the dual powers to dismiss and strike punishment is not inconsistent. He also maintains section 186.22, subdivision (g), complements section 1385 because there was no similar provision at the time. (RABM at 11-13.) Fuentes fails to consider the fact that section 186.22, subdivision (g), only provides alternative means of judicial discretion – i.e., striking the punishment of enhancements and deviating from minimum sentences – as to some gang allegations, but not to all. Permitting the greater authority to dismiss *all* gang allegations as Fuentes urges would nullify section 186.22, subdivision (g)'s efforts to restrict judicial discretion in the context of gang allegations.

Section 186.22 encompasses three distinct classes of gang allegations (misdemeanors, enhancements, and alternate sentencing schemes), and subdivision (g) provides alternative means of discretion applicable to misdemeanors and enhancements. The Legislature specifically excluded the authority to strike the additional punishment of an alternate sentencing provision in the context of gang allegations. As pointed out in *People v. Campos* (2011) 196 Cal.App.4th 438, the greater authority to dismiss would nullify this legislative action and the punishment for a gang allegation subject to an alternate sentencing provision is therefore mandatory. (*Id.* at p. 454.) Thus, section 1385 authority to dismiss directly conflicts with section 186.22, subdivision (g)'s restriction on the lesser authority to strike punishment.

Fuentes says the *Campos* opinion erroneously held section 186.22, subdivision (g), replaced the court's authority under section 1385. (RABM

at 3.) But he does not directly address this premise of the *Campos* decision that found a conflict between the statutes.

Appellant also disagrees with Fuentes that the statutes do not conflict because there was no other authority permitting courts to strike the punishment of a gang allegation without outright dismissing the allegation. Since 1977, the Legislature had employed former section 1170.1, subdivision (h), to grant the additional discretion to strike the punishment of certain enumerated enhancements. In 1988, the Legislature enacted the STEP Act, an entirely new statutory scheme. Rather than adding section 186.22 to former 1170.1, subdivision (h), to grant additional discretion, the Legislature elected to include section 186.22, subdivision (g). Had the Legislature intended the discretion to strike the punishment to be extended to gang allegations without limitation, then it would have used former section 1170.1, subdivision (h), as it had for 11 years. The Legislature's decision to include a specific provision granting trial courts an alternative means to ameliorate the punishment on some gang allegations, shows the intent that section 186.22, subdivision (g), was to divest courts of contrary statutes. The statutes necessarily conflict and the notwithstanding clause controls.

B. The Legislature's Subsequent Changes To Sections 1385 and 1170.1 Show Section 186.22, Subdivision (g), Eliminated Section 1385 Discretion To Dismiss Gang Allegations

Section 186.22, subdivision (g), has substantively remained the same since 1989. However, the Legislature has gradually reformed the Penal Code to codify the general authority to dismiss under section 1385, subdivision (a), to include the optional authority to strike the punishment per section 1385, subdivision (c). When repealing former section 1170.1, subdivision (h), the Legislature clarified that the repeal would in no way affect the authority to strike. This was necessary because the Legislature's

amendments to section 1170.1, subdivision (h), had been frequently used to interpret legislative intent. (See e.g., *People v. Thomas, supra*, 4 Cal.4th at pp. 211-213; *People v. Meloney* (2003) 30 Cal.4th 1145, 1155-1156.)

Fuentes argues subsequent legislation shows former section 1170.1, subdivision (h), was intended to grant the discretion to strike the punishment and was never intended to interfere with the authority to dismiss. He further reasons section 186.22, subdivision (g), was also intended to have the same effect. (RABM at 14.) Appellant does not dispute that when the Legislature repealed section 1170.1, subdivision (h), and later enacted section 1385, subdivision (c), it explained the repeal should not impact the authority to dismiss the enumerated sections. But the Legislature chose to include the limiting provision of subdivision (g) in section 186.22 and has not amended it since. Section 186.22, subdivision (g), was enacted to replace, not complement section 1385 discretion, and the Legislature has not acted to alter this purpose; any other interpretation would cause subdivision (g), to be simply redundant.

C. Penal Code Section 186.22, Subdivision (g), Has a Purpose – Preserving Gang Findings

The STEP Act was enacted to eliminate gang crime, and eliminating the authority to dismiss gang allegations serves this purpose by preserving gang findings that assist in proving gang related activity. Fuentes does not respond to this argument even though "'the fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law.'" (*People v. Thomas*, *supra*, 4 Cal.4th at p. 210.)

In enacting the STEP Act, the Legislature declared that California was "in a state of crisis" on account of violent street gangs terrorizing their neighborhoods. (§ 186.21.) The Legislature announced its intent to eradicate the criminal activity of street gangs by focusing on "patterns of

criminal gang activity" and the "organized nature of street gangs." (§ 186.21.) Proof of sustained gang allegations is an essential building block to identifying gang networks and members in order to hold them accountable for the added danger their criminal activity individually and collectively imposes on the public. These factual findings also assist in prosecuting individuals that act to expand and maintain gang membership, and knowingly provide firearms to gang members. (§§ 186.26 & 186.28.) In addition to stiffer penalties, the STEP Act also relies on these findings to pursue gang activity by way of injunctions, forfeiture, and gang registration. (§§ 186.22a & 186.30.)

The Legislature has statutorily defined a "criminal street gang"[4] and this "component of a gang enhancement requires proof of three essential elements: (1) that there be an 'ongoing' association involving three or more participants, having a 'common name or common identifying sign or symbol'; (2) that the group has as one of its 'primary activities' the commission of one or more specified crimes; and (3) the group's members either separately or as a group 'have engaged in a pattern of criminal gang activity.' [Citation.]" (*In re Alexander L.* (2007) 149 Cal.App.4th 605, 610-611, quoting *People v. Vy* (2004) 122 Cal.App.4th 1209, 1222.)

A gang's primary activities may be proved by the past and present criminal activities of the gang provided it consists of evidence that the "group's members consistently and repeatedly have committed criminal activity listed in the gang statute." (*People v. Sengpadychith* (2001) 26

---

[4] A criminal street gang is "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (§ 186.22, subd. (f).)

Cal.4th 316, 323-324.) The presentation of gang evidence is done by expert testimony, but this must be based on an adequate factual foundation. (*Id.* at p. 323.) "A gang engages in a 'pattern of criminal gang activity' when its members participate in 'two or more' specified criminal offenses (the so-called 'predicate offenses') that are committed within a certain time frame and 'on separate occasions, or by two or more persons." (*People v. Loeun* (1997) 17 Cal.4th 1, 4; § 186.22, subd. (e).)

Proof of predicate offenses cannot be established by "vague, second-hand testimony" and "incompetent hearsay." (*In re Nathaniel C.* (1991) 22 Cal.App.3d 990, 1003.) Rather, "[i]t is incumbent upon the prosecution in seeking an enhancement under section 186.22, subdivision (b), to prove through competent evidence the elements of a 'criminal street gang' as set out in the statute, including the offenses necessary to satisfy the pattern requirement." (*Id.* at p. 1004.)

Court adjudicated findings on gang allegations are the most reliable source to identify members of a gang and prove that a particular gang engages in specified criminal offenses. (See *In re Alexander L., supra,* 149 Cal.App.4th at p. 612 ["It is impossible to tell whether [the gang expert's] claimed knowledge of the gang's activities might have been based on highly reliable sources, such as court records of convictions, or entirely unreliable hearsay."].) "Of course, any material that forms the basis of an expert's opinion testimony must be reliable. [Citation.] ... 'Like a house built on sand, the expert's opinion is no better than the facts on which it is based.' [Citation.]" (*People* v. *Gardeley, supra,* 14 Cal.4th at p. 618.)

Once a gang allegation is proven by court adjudication, the finding may be relied upon to ensure consistency in the prosecution of gang members. A proven gang allegation not only identifies the defendant's gang-related criminal conduct, but the finding necessarily establishes that a particular group is a criminal street gang. This allows the prosecution to

pursue other members of the gang without having to prove repeatedly that a particular group meets the statutory criteria of a criminal street gang.

There is a significant difference between dismissing an allegation and striking the punishment, especially in the context of gang allegations. If a gang allegation is outright dismissed, it is gone and can never be relied upon again. Whereas, if the punishment is stricken, the trial court maintains discretion in the course of sentencing, but the finding still exists and can be used at a later date. It stands to reason that the Legislature enacted the limited discretion to strike punishment in section 186.22, subdivision (g), in place of the greater authority to dismiss, in order to ensure the trial courts and all parties put the newly enacted STEP Act into effect. Replacing general authority to dismiss with limited authority to strike the punishment in the context of gang allegations ensured the STEP Act would hit the ground running and build the momentum it needed to be effective by establishing which entities constituted street gangs.

Fuentes points out that if the gang allegations had not been dismissed, then the ramifications of his conduct had the potential to double his sentence, establish a more serious criminal record, and limit his future qualification to attend rehabilitation programs. (RABM at 2.) This is the intended result of the STEP Act: to target criminal street gangs and impose stiffer penalties on gang related conduct. While Fuentes's conduct may not have been particularly egregious in the present matter, the prosecution presumably could have proved his charged gang allegations and the trial court could have stricken the punishment if warranted. By restricting the trial court's discretion to dismiss gang allegations, the true finding could have been used in the future prosecution of Fuentes or other members of the same gang. The cooperation and repetitive criminal conduct by street gangs and their members is precisely what sets them apart from other

criminal conduct. The purpose of the STEP Act can only be accomplished by preserving these allegations for future use.

Section 186.22, subdivision (g), should be interpreted in a manner that furthers the legislative goals of the STEP Act to eradicate criminal gang activity and does not nullify the Legislature's efforts. Eliminating the authority to dismiss gang allegations will result in more court findings that can be used in future litigation to prove street terrorism and future gang allegations. These findings will also facilitate the ability to impose gang injunctions, registration, and forfeiture of assets. This will further the overall purpose of the STEP Act to target gang crime by crippling their networks. On the other hand, granting trial courts the authority to dismiss any gang allegation, but only granting the authority to strike the punishment of certain gang allegations, results in subdivision (g), being utterly redundant.

D. The Legislature's Elimination Of The Section 1385 Statutory Authority To Dismiss Does Not Implicate The Separation of Powers Doctrine

The separation of powers doctrine is not at issue here because it is not implicated when the Legislature statutorily limits judicial discretion. The separation of powers doctrine is only at issue when such judicial discretion is dependent upon the People's acquiescence to the dismissal. (*People v. Romero, supra* 13 Cal.4th at pp. 513-517.) Appellant's interpretation of section 186.22, subdivision (g), does not predicate judicial discretion upon approval by the People; it eliminates the discretion to dismiss an allegation altogether.

Fuentes contends the prosecutor was not just objecting to the trial court's statutory discretion to strike the gang enhancement, but also alluded that the trial court needed the People's approval before dismissing the allegations from the charging document. (RABM at 20.) Appellant has

never advanced this position and would not do so. Even assuming the prosecutor was objecting on additional grounds, the only objection at issue is whether the trial court retained the statutory authority to dismiss the gang allegations in the wake of section 186.22, subdivision (g).

For practical purposes, if section 1385 does not apply to gang allegations, this would mean that neither the trial court nor the prosecutor would be able to dismiss a gang allegation in the furtherance of justice once it was filed. As a general rule, the selection of criminal charges is a matter subject to prosecutorial discretion. (*People v. Birks* (1998) 19 Cal.4th 108, 134.) Here, the prosecutor would still maintain the discretion whether to charge gang allegations at the outset.

However, the district attorney acts as a state officer when prosecuting crimes and the authority of the office derives from statute. (See *Pitchess v. Superior Court* (1969) 2 Cal.App.3d 653, 657; *County of Modoc v. Spencer* (1894) 103 Cal. 498, 499.) The Legislature can statutorily limit a prosecutor's discretion, as was done in the Three Strikes Law that requires the prosecutor to plead and prove each prior serious felony conviction. (§ 1170.12, subd. (d)(1).) Thus, once the gang allegation is charged, the prosecutor has no independent authority to abandon its prosecution. (§ 1386.)

Withdrawing section 1385 discretion to dismiss gang allegations once charged would be analogous to a section 667, subdivision (a), enhancement. Once pled (as required in that situation), imposition of a section 667, subdivision (a), enhancement is mandatory; the allegation may not be stricken pursuant to section 1385. (§ 1385, subd. (b) ["This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667"]; *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1560–1561.) Thus neither party can pursue dismissal under section 1385. However, a key difference is that

once a gang allegation is proven, the trial court retains the discretion to strike the punishment. It just cannot strike the finding.

This is not to say that the parties do not retain other sources to ensure improperly filed gang allegations are dismissed. For instance, section 1118.1 would permit the dismissal of a gang allegation before it goes to the jury if it is supported by insufficient evidence. (§ 1118.1.) If there is a true finding on the allegation, the trial court may also invoke section 1181(6) and grant a motion for new trial if the finding is contrary to law or evidence. (§1181; see *Porter v. Superior Court* (2009) 47 Cal.4th 125.)

The impact of section 186.22, subdivision (g), displacing the discretion to dismiss gang allegations under section 1385, is that once charged, the gang allegation may not be dismissed on the broad and amorphous concept of "in furtherance of justice" and must be adjudicated. Yet, the trial court may still grant leniency by striking the punishment in the furtherance of justice if it seems fit. Since removing the authority to dismiss gang allegations extends to all parties, there is no violation of the separation of powers doctrine.

///

///

///

///

///

///

///

///

///

///

///

///

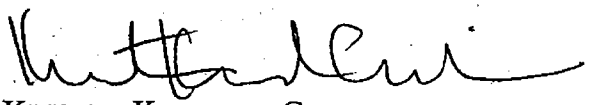
CONCLUSION

For the foregoing reasons, and those stated in Appellant's Opening Brief on the Merits, appellant respectfully asks that this Court reverse the judgment of the Court of Appeal.

Dated: March 23, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVE OETTING
Supervising Deputy Attorney General
LISE JACOBSON
Deputy Attorney General



KRISTEN KINNAIRD CHENELIA
Deputy Attorney General
Attorneys for Respondent

KKC:dw
SD2014809185
81034529.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached **APPELLANT'S REPLY BRIEF** uses a 13 point Times New Roman font and contains **4,643** words.

Dated: March 23, 2015

KAMALA D. HARRIS
Attorney General of California

KRISTEN KINNAIRD CHENELIA
Deputy Attorney General
Attorneys for Respondent
General Fund - Legal/Case Work

DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Fuentes** No.: **S219109**

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 that same day in the ordinary course of business.

On March 24, 2015, I served the attached **APPELLANT'S REPLY BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Miles David Jessup, Public Defender
Orange County Public Defender's Office
14 Civic Center Plaza
Santa Ana, CA 92701-4029
Attorney for Alexis Alejandro Fuentes (2)

Tony Rackauckas
District Attorney – Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

Alan Carlson, Court Executive Officer
For the Honorable Nicholas S. Thompson
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

California Court of Appeal
Fourth Appellate District, Div. III
601 W. Santa Ana Blvd.
Santa Ana, CA 92702

and, furthermore I declare, in compliance with California Rules of Court, rules 2.251(i)(1)(A)-(D) and 8.71 (f)(1)(A)-(D), I electronically served a copy of the above document on **March 24, 2015** to Appellate Defenders, Inc.'s electronic service address.

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 March 24, 2015, at San Diego, California.

D. Wallace
Declarant

D. Wallace
Signature

SD2014809185 /81034684.doc