# In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

*Petitioner,*

v.

**THE SUPERIOR COURT OF SAN BERNARDINO COUNTY,**

*Respondent,*

**JOHNNY MORALES,**

*Real Party in Interest.*

**CAPITAL CASE**

Case No. S228642

(*Related Case No. S137307*)



Fourth Appellate District, Division Two, Case No. E061754
San Bernardino County Superior Court, Case No. FVA 015456
The Honorable INGRID A. UHLER, Judge

## ANSWER BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
DONALD DENICOLA
Deputy Solicitor General
HOLLY D. WILKENS
Supervising Deputy Attorney General
MICHAEL T. MURPHY
Deputy Attorney General
State Bar No. 178384
600 West Broadway, Suite 1800
San Diego, CA 92101
Telephone: (619) 645-3081
Fax: (619) 645-2012
Email: Mike.Murphy@doj.ca.gov
*Attorneys for Petitioner*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page**

**CASES**

## TABLE OF AUTHORITIES
**(continued)**

**Page**

## TABLE OF AUTHORITIES
**(continued)**

**Page**



**STATUTES**

## TABLE OF AUTHORITIES
## (continued)

**Page**

**COURT RULES**

## INTRODUCTION

The question for this Court is whether a trial court has jurisdiction to entertain a motion to preserve evidence in a capital case following entry of judgment and during the pendency of the automatic appeal. The Court of Appeal correctly concluded the trial court lacked jurisdiction.

The foundational principle that compels the conclusion reached by the Court of Appeal is that a motion is ancillary to an on-going cause of action; it is not an independent remedy. Accordingly, a trial court's authority to entertain a motion depends on whether the subject of the motion relates to a matter over which the court has jurisdiction. In *People v. Gonzalez* (1990) 51 Cal.3d 1179 (*Gonzalez*), and *People v. Johnson* (1992) 3 Cal.4th 1183 (*Johnson*), this Court established the rule that after judgment is entered in a criminal case the trial court lacks jurisdiction to act on a motion related to discovery, including a motion to preserve evidence. These cases were correctly decided because postconviction discovery is not a matter embraced in a criminal proceeding within the meaning of Code of Civil Procedure section 916, subdivision (a) (hereinafter section 916(a)). Therefore, absent statutory authority, a trial court lacks jurisdiction in the context of a criminal case to hear and determine matters of postconviction discovery, including a motion to preserve evidence.

Real party in interest Johnny Morales contends that *Gonzalez* and *Johnson* were wrongly decided because, he claims, this Court failed to properly apply the plain language of section 916(a). Alternatively, he contends that these cases were impliedly overruled by *Townsel v. Superior Court* (1999) 20 Cal.4th 1084 (*Townsel*), and *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180 (*Varian*), and by the enactment of Penal Code section 1054.9 (hereinafter section 1054.9) (providing for limited discovery upon the prosecution of a postconviction writ of habeas corpus). As a result of these developments in the law, Morales argues, trial courts

now have the inherent authority to issue postjudgment orders for preservation of evidence.

Morales's arguments should be rejected. *Townsel* and *Varian* are not inconsistent with *Gonzalez* and *Johnson*. And, while section 1054.9 now grants courts the authority to order limited discovery in aid of preparing habeas corpus petitions, that statute does not confer jurisdiction on a trial court to entertain postjudgment motions to preserve evidence in the course of a criminal case.

As a separate issue, Morales also argues that, even if this Court disagrees with his position on the jurisdictional issue, the law was unsettled at the time of the superior court's order so that mandate relief was unwarranted anyway. This argument is unpersuasive because mandate lies to correct a court's unlawful order, and the trial court's order in this case was unlawful due to a lack of jurisdiction.

## STATEMENT

Morales is represented by the State Public Defender in the pending automatic appeal of the death judgment in case number S137307. During record-correction proceedings, the State Public Defender filed in the superior court, on behalf of Morales, a motion "to preserve files, records, evidence and other items related to the automatic appeal." (Petn. for Writ of Mandate, Exh. 1 at p. 2.)[1] By this motion, Morales sought an order directing several city, county, and state governmental agencies to preserve certain materials. Those agencies were identified as follows: "the San Bernardino County District Attorney, the San Bernardino County Sheriff-Coroner, the Montclair Police Department, the Fontana Police Department,

[1] The page numbers in the citations to the exhibits refer to the consecutive page numbering affixed to the bottom right corner of the exhibit pages.

the Colton Police Department, the Corona Police Department, the San Bernardino Police Department (including the San Bernardino Police Department Crime Lab), the San Bernardino County Sheriff's Department, the San Bernardino County Sheriff's Scientific Investigations Division, the San Bernardino County Children and Family Services and the Children's Assessment Center, the San Bernardino County Probation Department, the San Bernardino County Superior Court, the San Bernardino County Jury Commissioner, the San Bernardino County Information Services Department, the San Bernardino County Jail, West Valley Detention Center, California Department of Corrections, the Attorney General of California, and their present and former employees, agents, and representatives." (*Id.*, Exh. 1 at pp. 2-3.)

The materials sought to be preserved were broadly described as the "files, records, evidence and any other items pertaining to the prosecution of this case and relating to the investigation of the death of Elia Lopez and the robbery of Carlos Gutierrez that occurred on June 9, 2001, in the City of Bloomington, as well as offenses alleged as other-crimes evidence and as aggravating factors during the guilt and penalty phases" of the trial against Morales. (Petn. for Writ of Mandate, Exh. 1 at p. 3.) Morales then identified 22 categories of materials. (*Id.*, Exh. 1 at pp. 3-8.) He requested that the order remain in effect until 30 days after execution of the death sentence. (*Id.*, Exh. 1 at p.8.) Finally, Morales asked that the court direct "the agencies named in his motion" to disclose "whether any of the items or materials mentioned above are in the possession of any other governmental unit, entity, official, employee or former employee and/or whether any of such material has been destroyed." (*Ibid.*)

The asserted purpose of the motion was to preserve evidence to potentially aid habeas counsel in preparing a petition for collateral relief. (Petn. for Writ of Mandate, Exh. 1 at p. 10.) The State Public Defender did

not file a motion for discovery under Penal Code section 1054.9 because he was appointed to represent Morales only on direct appeal and his duties do not encompass seeking discovery in aid of preparing a habeas corpus petition. (*Id.*, Exh. 1 at p. 13.) When the motion was filed, separate habeas corpus counsel had not yet been appointed. (*Ibid.*)

The People, represented by the district attorney, filed an opposition to the motion, arguing that the trial court lacked jurisdiction to issue a postjudgment order for the preservation of evidence or to require agencies to make an accounting of the requested items. (Petn. for Writ of Mandate, Exh. 2 at pp. 33-37, 45.) The district attorney further argued that the proposed order was unnecessary, overbroad, and onerous, both in its scope and its duration. (*Id.*, Exh. 2 at pp. 37-44.)

The superior court granted the motion. (Petn. for Writ of Mandate, Exh. 5. at pp.113-116.) With respect to all the agencies identified in the motion other than the district attorney's office, the court granted the motion because, even though those agencies received notice of the motion, "[t]hey have not opposed the request, so I don't have any opposition to grant that request. [¶] . . . [¶] "And in all honesty, if I felt that they had an objection to that request, then they would have lodged it with the Court, because they did get due notice of it." (*Id.*, Exh. 5 at pp. 113-114.) With respect to the district attorney's office, the court granted the motion over its objection. (*Id.*, Exh. 5 at pp. 114-116.) The court explained: "[My] feeling is, I see Mr. Dowd's [the deputy district attorney's] point, but to me in terms of, if ultimately the trial court has authority now for further discovery [under Penal Code section 1054.9], that obviously if we didn't also have that authority to preserve, that there may be nothing to discover. [¶] . . . [¶] So that's just my common sense approach to it, so that's how I view it." (*Id.*, Exh. 5 at p. 114.)

The People filed a petition for a writ of mandate in the Court of Appeal for the Fourth Appellate District, Division Two, seeking to have the order vacated on the ground that the superior court lacked jurisdiction. (See Petn. for Writ of Mandate.) Morales filed a response, and the Court of Appeal issued an order to show cause.

After hearing oral argument, the Court of Appeal filed an opinion in which it issued a peremptory writ of mandate directing the superior court to vacate its order and to enter a new order denying the motion to preserve evidence. (*People v. Superior Court (Morales)* (2015) 239 Cal.App.4th 93, rev. granted Sep. 30, 2015, S228642.) The Court of Appeal determined that this result was compelled by this Court's opinions in *Gonzalez*, *Johnson*, and *People v. Picklesimer* (2010) 48 Cal.4th 330, 337 (affirming principle that a motion is not an independent remedy but implies the pendency of an underlying cause of action to which it relates). (*People v. Superior Court (Morales)*, *supra*, Slip opinion, pp. 7-10.)

This Court granted Morales's petition for review.

## ARGUMENT

### I. A TRIAL COURT LACKS JURISDICTION TO ISSUE A POSTJUDGMENT ORDER TO PRESERVE EVIDENCE BECAUSE SUCH MATTERS OF POSTJUDGMENT DISCOVERY ARE NOT EMBRACED IN A CRIMINAL ACTION

In *Gonzalez*, *supra*, 51 Cal.3d 1179, this Court held that a trial court, after entry of judgment in a criminal case, lacks jurisdiction to grant a motion for postjudgment discovery. (*Id.* at p. 1257.) And in *Johnson*, *supra*, 3 Cal.4th 1183, this Court held that a trial court lacks jurisdiction to entertain a postjudgment motion for preservation of evidence—which this Court characterized as essentially a request for "anticipatory postjudgment discovery." (*Id.* at pp. 1257-1258.) These decisions control this case: Because Morales's motion was filed after entry of judgment, and sought to

invoke the trial court's discovery authority, the trial court lacked jurisdiction to rule on the motion.

Morales argues that *Gonzalez* and *Johnson* were wrongly decided. Alternatively, he argues that subsequent developments in the law have rendered them a "dead letter." Neither argument has merit. Then, as now, a trial court lacks authority to entertain a postjudgment motion for preservation of evidence because matters of postjudgment discovery are not embraced in a criminal proceeding, and therefore do not relate to any proceeding over which the trial court has jurisdiction.

### A. *Gonzalez* and *Johnson* Correctly Held That, After Judgment Has Been Entered in a Criminal Case, a Trial Court Generally Has No Jurisdiction to Hear and Determine a Discovery Motion

In *Gonzalez* and *Johnson*, this Court held that a trial court generally lacks authority to issue postjudgment orders relating to discovery—including orders to preserve evidence—because after judgment is entered nothing remains pending in the trial court to which its discovery authority may attach. (*Johnson*, *supra*, 3 Cal.4th at p. 1258; *Gonzalez*, *supra*, 51 Cal.3d at p. 1257.) Morales contends these decisions are wrong because they "ignored" the "plain terms" of section 916(a). (Brief on the Merits, at pp. 14-15.) Contrary to Morales's position, this Court's decisions in *Gonzalez* and *Johnson* were correct.

#### 1. *People v. Gonzalez*

In the *Gonzalez* capital case, habeas corpus proceedings were consolidated with the automatic appeal. (*Gonzalez*, *supra*, 51 Cal.3d at p. 1199; *id.* at p. 1285 [dis. opn. of Broussard, J.].) One of the issues raised by the defendant on habeas was whether the prosecution at the trial knowingly had presented false testimony from a jailhouse informer named

Acker, who had been housed in the Los Angeles County Jail. (*Id.* at p. 1242; *id.* at pp. 1280, 1286 [dis. opn. of Broussard, J.].) This Court found that *Gonzalez* failed to state a prima facie case on that claim. (*Id.* at pp. 1240-1242.)

Subsequently, news broke of a widespread practice of perjury by inmate informers held in the Los Angeles County jail. (*Gonzalez*, *supra*, 51 Cal.3d at pp. 1279-1280 [dis. opn. of Broussard, J.].) The trial court granted a discovery motion filed by the defendant seeking access to law enforcement files relating to Acker. (*Id.* at pp. 1255-1256.) The People filed a petition for writ of mandate in this Court seeking to overturn the trial court's postjudgment discovery order. (*Id.* at p. 1256.)

This Court issued a peremptory writ of mandate because "[t]he trial court lacked jurisdiction to order 'free-floating' postjudgment discovery when no criminal proceeding was then pending before it." (*Gonzalez*, *supra*, 51 Cal.3d at p. 1256.) That conclusion was grounded in the rule that a court's authority to entertain a motion generally depends on its relation to a proceeding over which the court has jurisdiction; if there is no such proceeding pending in the court, it lacks jurisdiction to rule on the motion.[2] (*Id.* at p. 1257.) This is so because, "'[a]s with any other motion, a discovery motion is not an independent right or remedy. It is ancillary to an ongoing action or proceeding. After the judgment has become final, there is nothing pending in the trial court to which a discovery motion may attach.'" (*Ibid.*, quoting *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 251.) This was true even though the case was pending on appeal, because

---

[2] Exceptions to this rule generally arise in instances where a statute specifically authorizes a free-standing motion. (*People v. Picklesimer*, *supra*, 48 Cal.4th at p. 337 fn. 2; see, e.g., Pen. Code, § 17, subd. (b)(3) [motion to reduce a "wobbler" to a misdemeanor]; Pen. Code, § 1203.4 [motion by probationer to vacate plea and dismiss charges].)

a trial court's direct jurisdiction over a case that is on appeal "is strictly limited by statute and by the appellate remittitur." (*Gonzalez*, *supra*, 51 Cal.3d at p. 1257, citing, inter alia, Code of Civ. Proc., § 916, subd. (a).)

*Gonzalez* rejected the defendant's argument that *Wisely v. Superior Court* (1985) 175 Cal.App.3d 267, compelled a contrary conclusion. In *Wisely*, the Court of Appeal held that, during the pendency of the People's appeal from an order granting a capital defendant a new penalty trial, the trial court retained jurisdiction to grant the defendant's discovery motion related to the new trial. The appellate court said that "discovery proceedings sought preparatory to an anticipated new trial on the penalty phase constitute matters embraced in the action and not affected by the judgment or order, within the meaning of Code of Civil Procedure section 916." (*Id.* at p. 270.) To hold otherwise, the appellate court asserted, "would have a distinctly adverse effect on petitioner's fundamental right to a fair trial." (*Ibid.*)

This Court in *Gonzalez* deemed *Wisely* inapposite because there was to be a new penalty trial in that case. Thus, there was a matter pending in the trial court to which the discovery motion could attach. In the *Gonzalez* case, however, there was no new-trial order, or other pending matter, to which such a motion could attach. (*Gonzalez*, *supra*, 51 Cal.3d at p. 1257.)

*Gonzalez* also rejected the defendant's reliance on Code of Civil Procedure section 187, "which grants every court all means necessary to carry its jurisdiction into effect." As *Gonzalez* explained, "[b]y its terms, . . . section 187 operates only where some other provision of law confers judicial authority *in the first instance*." (*Gonzalez*, *supra*, 51 Cal.3d at p. 1257, emphasis in original.) In *Gonzalez*, no other provision of law had conferred jurisdiction in the first place. (*Id.* at pp. 1257-1258.)

*Gonzalez* also rejected the argument that jurisdiction arose from the inherent judicial authority to order discovery in aid of fair criminal trials.

This Court's opinion explained that, *after* a conviction has been entered, the presumption of innocence has been overcome and there are no similar rights to postconviction discovery designed to aid a defendant's collateral efforts to overturn a conviction. (*Gonzalez*, *supra*, 51 Cal.3d at p. 1258.)

This Court further rejected the notion that it should order or approve the requested discovery itself under the unique circumstances of that case. First, the appellate function "does not include providing a party with discovery that might undermine the judgment under review." (*Gonzalez*, *supra*, 51 Cal.3d at p. 1258.) Second, the habeas proceedings did not provide an appropriate vehicle to order discovery because the Court had already concluded that the defendant failed to state a prima facie case that Acker provided perjured testimony. "Any petition that does not [establish a prima facie case] must be summarily denied, and it creates no cause or proceeding which would confer discovery jurisdiction." (*Gonzalez*, *supra*, 51 Cal.3d at pp. 1258-1259.)

### 2. *People v. Johnson*

During the pendency of the automatic appeal, the defendant in *Johnson* moved the trial court for an order for preservation of materials offered or received into evidence in the capital trial, and of materials offered or received into evidence in an earlier trial that had resulted in his conviction of voluntary manslaughter. *Johnson*, *supra*, 3 Cal.4th at p. 1256.) The motion also sought preservation of "'all law enforcement reports, notes, tape recordings, or other memorializations or fruits of law enforcement investigation or witness interviews, all scientific or forensic reports or notes and underlying documentation, all photographs, and all other items of evidence'" related to the capital trial or to the prior manslaughter trial. (*Ibid.*)

The trial court denied the motion on the ground that it lacked jurisdiction. (*Johnson*, *supra*, 3 Cal.4th at p. 1256.) *Johnson* filed a notice of appeal in the Court of Appeal. That appeal was transferred to this Court and consolidated with the automatic appeal. (*Ibid.*)

This Court affirmed the denial of the motion to preserve evidence. It characterized *Johnson*'s motion as one that "essentially sought anticipatory postjudgment discovery." (*Johnson*, *supra*, 3 Cal.4th at pp. 1257-1258.) The Court then followed the holding in *Gonzalez* that discovery motions "fall outside the trial court's jurisdiction when unconnected with any criminal proceeding then pending before it." (*Id.* at p. 1258, citing *Gonzalez*, *supra*, 51 Cal.3d at pp. 1256-1258, and *People v. Ainsworth*, *supra*, 217 Cal.App.3d at pp. 250-255.)

This Court rejected Johnson's claim that jurisdiction was granted by section 916(a). It explained that, under that section, "during the pendency of an appeal, the trial court loses jurisdiction to do anything in connection with the cause that may affect the judgment, but retains certain powers over the parties and incidental aspects of the cause, such as procedural steps in connection with preparation and correction of the record." (*Johnson*, *supra*, 3 Cal.4th at p. 1257.) Johnson sought to "equate preservation of the requested materials with preparation of the record (proceedings for which were ongoing in the trial court when he made his motion for preservation)." (*Ibid.*) But this Court dismissed that idea, finding that "[t]he record correction proceedings pending before the trial court at the time of defendant's motion are not the type of proceeding that can support a request for discovery." (*Id.* at p. 1258.)

The *Johnson* opinion went on to distinguish three appellate decisions that had recognized a trial court's jurisdiction to enter certain postjudgment orders. First, it distinguished *Hays v. Superior Court* (1940) 16 Cal.2d 260, 262-267, in which this Court held that a trial court had jurisdiction to order

postponement of a deposition during the pendency of an appeal from the dismissal of a civil complaint. The *Johnson* court explained that the issue in *Hays* "implicated a discovery statute giving litigants a broad right to take depositions at any time after service of summons of defendant's appearance" whereas "no comparable discovery statute exists in the present context." (*Johnson*, *supra*, 3 Cal.4th at p. 1257.)

Second, *Johnson* distinguished *In re Ketchel* (1968) 68 Cal.2d 397, in which this Court held that the trial court had jurisdiction, during the pendency of an automatic appeal, over a habeas corpus petition that asserted prison officials had interfered with the defendant's right to assistance of counsel by refusing to allow psychiatrists to interview him. (*Id.* at pp. 399-402.) The *Johnson* court explained that the import of the *Ketchel* holding "was that the writ of habeas corpus lies to prevent official interference, except as necessary to ensure prison security, with an inmate's right of access to his counsel; no similar issue exists in this case." (*Johnson*, *supra*, 3 Cal.4th at p. 1257.)

The third case distinguished by *Johnson* was *Wisely v. Superior Court*, *supra*, 175 Cal.App.3d 267, discussed above. Like in *Gonzalez*, this Court in *Johnson* distinguished *Wisely* because *Wisely* "depends heavily on the fact that a new penalty trial was anticipated when defendant initiated the challenged postjudgment discovery; that circumstance is absent from this case." (*Johnson*, *supra*, 3 Cal.4th at p. 1257.)

Finally, this Court dismissed as unpersuasive Johnson's suggestion that jurisdiction must be found to preserve his right to meaningful collateral review. (*Johnson*, *supra*, 3 Cal.4th at p. 1258.)

### 3. *Gonzalez* and *Johnson* Were Correctly Decided

Morales contends this Court "overlooked and thus failed to resolve" the "real" jurisdictional issue in the *Gonzalez* case. (Brief on the Merits, at

p. 15.) He identifies the real issue as whether the discovery motion would affect the judgment on appeal or otherwise interfere with the appellate court's jurisdiction. (Brief on the Merits, at p. 15 [under section 916(a) "the real jurisdictional question for the *Gonzalez* majority to resolve was whether the discovery motion involved a matter collateral to the judgment on appeal or whether it would have affected or altered the judgment on appeal or otherwise interfered with the appellate court's jurisdiction"], italics omitted; *id.* at p. 19 [under section 916(a) the jurisdictional issue "turns on the impact of a motion or order on the judgment being appealed and the appellate court's jurisdiction"]; *id.* at p. 20 [under section 916(a) "the only jurisdictional question becomes whether the motion is collateral to, and does not seek to alter or affect, the judgment being appealed"].) Morales's argument is based on a misreading of the jurisdictional requirements in section 916(a). This Court did not miss the point in *Gonzalez*.

Before a court may hear and determine a matter, it must have been granted jurisdiction over the subject; any order rendered by a court lacking subject matter jurisdiction is void on its face. (*Varian*, *supra*, 35 Cal.4th at p. 196; see *Gomez v. Superior Court* (2012) 54 Cal.4th 293, 303 [a grant of the authority to "hear and determine" a matter is a grant of subject matter jurisdiction]; *People v. Ainsworth*, *supra*, 217 Cal.App.3d at p. 255 ["'[A Court] cannot exercise jurisdiction in any instance until after it has acquired it'"].) Jurisdiction is granted either by the Constitution or by statute. (*Harrington v. Superior Court* (1924) 194 Cal. 185, 188.)

With respect to deciding a motion, a court's authority derives from the pendency of an underlying proceeding over which the court has jurisdiction, to which the motion relates. (*People v. Picklesimer*, *supra*, 48 Cal.4th at pp. 337-338.) This is so because a motion is not an independent remedy; rather, "[i]t is ancillary to an on-going action and

implies the pendency of a suit between the parties and is confined to incidental matters in the progress of the cause." (*Id.* at p. 337, internal quotation marks omitted.) Stated another way, "a motion relates to some question collateral to the main object of the action and is connected with, and dependent on, the principal remedy." (*Id.*, internal quotation marks omitted.) "In most cases, after the judgment has become final there is nothing pending to which a motion may attach." (*Id.*, internal quotation marks omitted.)

Thus, the fundamental question to answer when deciding if a trial court has jurisdiction to entertain a motion is this: Does the motion relate to a proceeding over which the trial court has jurisdiction?

This issue is relatively uncomplicated after both pronouncement of judgment and issuance of a remittitur following appeal, because in those circumstances the trial court's jurisdiction over the case is limited solely to the making of orders necessary to carry out the judgment as ordered by the appellate court. (*People v. Picklesimer*, *supra*, 48 Cal.4th at p. 337; *People v. Rittger* (1961) 55 Cal.2d 849, 852; *People v. Ainsworth*, *supra*, 217 Cal.App.3d at pp. 251-252.) Unless a motion relates to executing the judgment, there will be nothing left pending in the trial court to which a motion could attach. (E.g., *People v. Picklesimer*, *supra*, 48 Cal.4th at p. 338 [after issuance of remittitur trial court lacked authority to act on a motion related to mandatory sex offender registration because that mandate was not any part of the judgment, but a collateral consequence thereof].)

The issue might become more complicated during the period after pronouncement of judgment but before the issuance of a remittitur because, during that period, under section 916(a), trial courts retain jurisdiction over a wider array of matters. Section 916(a) states in relevant part:

> the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters

> embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.

(Code Civ. Proc., § 916, subd. (a).) Under this section, "'during the pendency of an appeal, the trial court loses jurisdiction to do anything in connection with the cause that may affect the judgment, but retains certain powers over the parties and incidental aspects of the cause . . . .'" (*Townsel, supra*, 20 Cal.4th at p. 1090, quoting *Johnson, supra*, 3 Cal.4th at p. 1257.)

Section 916(a) addresses two sides of the same coin: the first part of the section defines the matters over which the trial court loses jurisdiction during an appeal, and the second part defines the matters over which the trial court retains jurisdiction during an appeal. Under the first part, the trial court loses jurisdiction over matters "embraced" in or "affected" by the judgment on appeal. (Code of Civ. Proc., § 916, subd. (a); *Varian, supra*, 35 Cal.4th at p. 189.) Under the second part, the trial court retains jurisdiction over matters "embraced in the action and not affected by the judgment." (Code of Civ. Proc., § 916, subd. (a); *Townsel, supra*, 20 Cal.4th at pp. 1089-1090.)

The *Gonzalez* court properly concluded that the trial court lacked jurisdiction to hear and determine the postjudgment discovery motion because the motion did not relate to any matter over which the trial court was granted jurisdiction by section 916(a). *Gonzalez* was seeking discovery to help in pursuing habeas corpus relief. (*Gonzalez, supra*, 51 Cal.3d at p. 1256.) But "[a] habeas corpus matter has long been considered a separate matter from the criminal case itself." (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 572.) "The issue on habeas corpus is not the defendant's guilt or innocence or the appropriate punishment but whether the defendant . . . can establish some basis for overturning the underlying judgment." (*Ibid.*) Moreover, "[d]iscovery on habeas corpus is necessarily

directed at issues raised or potentially raised on habeas corpus, which may or may not relate to any of the evidence presented or not presented in the underlying criminal trial." (*Ibid.*) Thus, habeas discovery is not a matter "embraced in" the underlying criminal action. Accordingly, the *Gonzalez* court properly concluded the trial court lacked jurisdiction to act on a motion seeking habeas discovery. (Cf. *Wisely v. Superior Court*, *supra*, 175 Cal.App.3d at p. 270 [trial court retained authority over discovery "sought preparatory to an anticipated new trial on the penalty phase" because such discovery proceedings constituted "matters embraced in the action" within the meaning of section 916(a)].)

This Court also correctly decided *Johnson* in conformity with section 916(a). In *Johnson*, the circumstances differed from those in *Gonzalez* in two respects. First, the motion sought an order to preserve evidence, as opposed to an order for discovery. (*Johnson*, *supra*, 3 Cal.4th at p. 1256.) And, second, record-correction proceedings were pending in the trial court when the motion was filed. (*Id.* at p. 1257.) But neither circumstance required a different result.

The *Johnson* court explained that, for purposes of its jurisdictional analysis, the motion to preserve evidence related to the court's discovery authority because it essentially sought "anticipatory postjudgment discovery." (*Johnson*, *supra*, 3 Cal.4th at p. 1258.) This Court also rejected *Johnson*'s implied assertion that his preservation request related to the pending record correction proceedings, over which the trial court properly had jurisdiction under section 916(a). (*Id.* at pp. 1257, 1258.) Therefore, because the defendant's motion related to postjudgment discovery—a matter not embraced in the action—and because the motion did not relate to the record correction proceedings pending in the trial court, the *Johnson* court correctly concluded that the trial court lacked jurisdiction to act on the motion. (See *People v. Picklesimer*, *supra*, 48 Cal.4th at p. 338 [trial court

lacked authority to act on a motion that did not relate to a subject matter over which the court retained jurisdiction].)

Morales's criticism of *Gonzalez* and *Johnson* is rooted in a misreading of section 916(a). Morales interprets section 916(a) as granting jurisdiction to act on a matter so long as any orders do not "affect or seek to alter the judgment being appealed." (Brief on the Merits, at p. 21.) But his interpretation focuses on only one of the two requirements for exercising jurisdiction under section 916(a). As discussed above, that section also requires that the matter be "embraced in the action." (Code Civ. Proc., § 916, subd. (a).) Morales ignores this requirement. And this requirement was the key to the decision in both *Gonzalez* and *Johnson*, because matters of postjudgment discovery in aid of seeking collateral review are not embraced in a criminal proceeding. Rather, they relate to a habeas corpus proceeding, which is a separate action. (*People v. Superior Court (Pearson)*, *supra*, 48 Cal.4th at p. 572.)

### B. Subsequent Developments in the Law Do Not Undermine the Decisions in *Gonzalez* and *Johnson*, and Do Not Confer Jurisdiction to Entertain Postjudgment Motions Relating to Discovery in the Context of a Criminal Action

Morales contends that changes and developments in the law have abrogated the rule established in *Gonzalez* and *Johnson*, and rendered those decisions a "dead letter." But Morales's contention that this Court's subsequent decisions in *Townsel* and *Varian* "impliedly overruled" *Gonzalez* and *Johnson* is grounded in the same misreading of section 916(a) discussed above. As to the enactment of section 1054.9, this Court explained in *In re Steele* (2004) 32 Cal.4th 682, that this new law merely "modified" the holding in *Gonzalez* such that a putative habeas petitioner is now entitled to seek limited discovery if he is *preparing* to file the petition

as well as *after* the petition has been filed. (*Id.* at p. 691.) As explained below, that modification does not undermine the principle that matters of postjudgment discovery are not embraced in a criminal proceeding within the meaning of section 916(a), and, therefore, that a trial court generally lacks authority to address matters related to postjudgment discovery.

### 1. *Townsel* and *Varian* Did Not Overrule *Gonzalez* and *Johnson*

Morales contends this Court's decisions in *Townsel* and *Varian* implicitly overruled the decisions in *Gonzalez* and *Johnson* regarding the general question of a trial court's postjudgment jurisdiction during the pendency of an appeal. (Brief on the Merits, at p. 17.) This contention is based on the same false premise, discussed above, that jurisdiction during the pendency of an appeal depends only on whether the matter affects the judgment, and not also on whether it is embraced in the action.

In *Townsel*, the defendant was sentenced to death following his conviction of two counts of murder and other offenses. (*Townsel*, *supra*, 20 Cal.4th at pp. 1086-1087.) After judgment was entered and during record correction proceedings relating to the automatic appeal, the trial court ordered, sua sponte, that defense counsel must obtain court approval before contacting trial jurors. The defendant filed a petition for writ of mandate in this Court, raising the issue of "whether the trial court had authority to issue the order." (*Id.* at p. 1087.) This Court answered that question in the affirmative because, in part, it found that the no-contact order satisfied both conditions of section 916(a), i.e., it was a "matter embraced in the action and not affected by the judgment." (*Id.* at p. 1090.) The Court's decision also rested in part on the fact that a different statute, Code of Civil Procedure section 206, "presupposes the trial court will retain

jurisdiction to resolve issues concerning an attorney's postverdict contact with jurors." (*Id.* at p. 1091.)

*Townsel* is not inconsistent with this Court's decisions in *Gonzalez* and *Johnson*. The different outcome on the jurisdictional question in *Townsel* was not based on a change in the law; it was based on the fact that the subject matter on the jurisdictional question was different. In *Gonzalez* and *Johnson* the question was whether the trial court had jurisdiction over matters relating to postconviction discovery, whereas in *Townsel* the question was whether the trial court had jurisdiction over matters relating to protecting jurors from harassment. (See *Townsel*, *supra*, 20 Cal.4th at p. 1091 [describing jurisdictional question as relating to protecting jurors from harassment or other unwanted contact].) Indeed, *Townsel* cited *Johnson* with approval for the general rule that during the pendency of an appeal the trial court, under section 916(a), "'retains certain powers over the parties and incidental aspects of the cause . . . .'" (*Townsel*, *supra*, 20 Cal.4th at p. 1090, quoting *Johnson*, *supra*, 3 Cal.4th at p. 1257.)

The defendant in *Townsel* argued that *Johnson* was dispositive because it bars a trial court's entry of *any* order unconnected with any criminal proceeding then pending before it. (*Townsel*, *supra*, 20 Cal.4th at p. 1090.) Rejecting that argument, this Court correctly explained that *Johnson* "merely held the process of record correction is not a 'criminal proceeding' sufficient to support orders relating to discovery." (*Ibid.*, emphasis in original; see *Johnson*, *supra*, 3 Cal.4th at p. 1258.) It also pointed out that *Johnson* "did not purport to override section 916(a)'s language that, despite a pending appeal, a trial court could 'proceed upon any other matter embraced in the action and not affected by the judgment or order.'" (*Ibid.*) As explained above, the holding in *Johnson* is consistent with section 916(a). Thus, contrary to Morales's assertion, *Townsel* did nothing to limit the precedential value of *Johnson*'s jurisdictional analysis

or, by necessary implication, the *Gonzalez* analysis on which it was based. (Brief on the Merits, at p. 18.)

Morales's reliance on *Varian* is likewise unpersuasive. In *Varian*, this Court addressed whether the perfecting of an appeal from the denial of a special motion to strike a cause of action under Code of Civil Procedure section 425.16 automatically divests the trial court of jurisdiction over all further trial court proceedings on the merits upon the causes of action affected by the motion. (*Varian, supra*, 35 Cal.4th at p. 186.) The plaintiffs asserted that it does not, because the trial proceedings would have no effect on the appeal. (*Id.* at p. 188.) In analyzing the issue, this Court elaborated on how to determine if proceedings on a particular matter would affect an appeal, within the meaning of section 916(a), such that a trial court loses jurisdiction. (*Id.* at pp. 189-191.) But this Court did not address the requirement that a particular matter must be "embraced in the action" before a court can exercise jurisdiction over it, which was the dispositive issue in the *Gonzalez* and *Johnson* cases. Therefore, *Varian* does not undermine those decisions.

### 2. Penal Code Section 1054.9 Did Not Overrule *Gonzalez* and *Johnson*

Effective January 1, 2003, the Legislature added section 1054.9 to the Penal Code. (Stats. 2002, ch. 1105, § 1, enacting Sen. Bill No. 1391 (2001–2002 Reg. Sess.).) That section provides that an inmate who has been sentenced to death or life without the possibility of parole may now obtain, in certain circumstances, limited discovery to assist in preparing a habeas corpus petition. (*In re Steele, supra*, 32 Cal.4th at pp. 691, 695.)[3] Section 1054.9 says nothing about record-preservation orders.

---

[3] Section 1054.9 provides in relevant part:

(continued...)

The legislative history of section 1054.9 shows that the law was designed to address an injustice manifested in the circumstances of the *Gonzalez* case: when a putative habeas petitioner is not in possession of documents to which he was legally entitled at trial (because trial counsel lost or destroyed them, or never was provided them in the first place), he had no means to compel discovery of the original documents that may contain information necessary to establish a prima facie case for habeas relief. (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 898.) Thus, the Legislature's main purpose in adding section 1054.9 was "to enable defendants efficiently to reconstruct defense attorneys' trial files that might have become lost or destroyed after trial," in order to aid habeas counsel in preparing a petition for writ of habeas corpus. (*Id.* at p. 897; accord *In re Steele*, *supra*, 32 Cal.4th at p. 694.) The statute also allows discovery of materials that the defense was entitled to receive but for some reason did not, as well as materials the defense would have been entitled to receive had it requested them. (*In re Steele*, *supra*, at pp. 694-696.)

---

(...continued)

> (a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b).
>
> (b) For purposes of this section, 'discovery materials' means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(Pen. Code, § 1054.9.)

However, section 1054.9 provides only limited discovery; it does not provide for "the proverbial 'fishing expedition' for anything that might exist." (*Barnett v. Superior Court*, *supra*, 50 Cal.4th at p. 894.) Moreover, defendants seeking access to materials that were not provided before trial must show a reasonable basis to believe the materials actually exist. (*Ibid.*) Finally, the statute allows discovery only of materials currently in the possession of the prosecution and law enforcement agencies; it does not impose a duty to preserve evidence. (*In re Steele*, *supra*, 32 Cal.4th at p. 695.)

This Court, in *In re Steele*, explained the impact of section 1054.9 on its decision in *Gonzalez*:

> In *People v. Gonzalez*, *supra*, 51 Cal.3d at pages 1257 and 1261, we said that after the judgment had become final, nothing was pending in the trial court to which a discovery motion may attach, and that the defendant had to state a prima facie case for relief before he may receive discovery. Section 1054.9 modifies this rule. Defendants are now entitled to discovery to assist in stating a prima facie case for relief. But the only way this modification of the *Gonzalez* rule makes sense is to permit defendants to seek discovery *before* they file the petition, i.e., before they must state a prima facie case. Reasonably construed, the statute permits discovery as an aid in preparing the petition, which means discovery may come before the petition is filed. Thus, we believe a defendant is entitled to seek discovery if he or she is preparing to file the petition as well as after the petition has been filed.

(*In re Steele*, *supra*, 32 Cal.4th at p. 691.)

Thus, section 1054.9 affects the holding in *Gonzalez* only to the extent that a putative habeas petitioner can now bring a statutory motion for discovery to assist in the preparation of a habeas corpus petition. It does not, as Morales argues, supersede the holdings in *Gonzalez* and *Johnson* that matters of postconviction discovery generally do not relate to any matter over which the trial court has jurisdiction in a criminal case.

Morales admits that section 1054.9 does not directly confer jurisdiction to issue a preservation order. However, he asserts that trial courts have the inherent authority to issue such an order, as a means to carry into effect the jurisdiction conferred under that statute. Morales is incorrect.

A court has the inherent power to effectuate its jurisdiction. This authority is codified in Code of Civil Procedure section 187, which states:

> When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.

(Code Civ. Proc., § 187.) Under this section, where jurisdiction over a subject exists from another source, a court is authorized to exercise "any of their various powers as may be necessary to carry out that jurisdiction." (*People v. Picklesimer*, *supra*, 48 Cal.4th at p. 338.)

But the court's inherent power is limited to fashioning procedural rules in the absence of an established procedure. (See *Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 813 [recognizing the inherent power of courts to adopt "any suitable method of practice . . . if the procedure is not specified by statute or by rule adopted by the Judicial Council"].) As described by the Court of Appeal in *Topa Ins. Co. v. Fireman's Fund Ins. Companies* (1995) 39 Cal.App.4th 1331, this power is "narrowly . . . confined to procedural innovations arguably essential to effective exercise of otherwise-granted jurisdiction or vindication of otherwise-established substantive rights or powers." (*Id.* at p. 1344.) "A court has no authority to confer jurisdiction upon itself where none exists." (*Riverside County Sheriff's Dept. v. Stiglitz* (2014) 60 Cal.4th 624, 636.) Nor may a court "bless procedural innovations inconsistent with the

will of the Legislature or that usurp the Legislature's role by fundamentally altering criminal procedures." (*People v. Lujan* (2012) 211 Cal.App.4th 1499, 1507, as modified on denial of reh'g (Jan. 15, 2013).)

Under these principles, a trial court does not have the inherent power to issue a postconviction order for the preservation of evidence. First, this Court has already established procedures for vindicating the limited right to discovery granted to defendants by section 1054.9: "Defendants should first seek to obtain their trial files from trial counsel. But if a defendant can show a legitimate reason for believing trial counsel's current files are incomplete . . ., the defendant should be able to work with the prosecution to obtain copies of any missing discovery materials it had provided to the defense before trial (assuming it still possesses them). [Citation.] If necessary, the trial court can order the prosecution to provide any materials it still possesses that it had provided at time of trial." (*Barnett v. Superior Court*, *supra*, 50 Cal.4th at p. 898.) The trial court can also order the prosecution to produce materials in its possession that the defendant was entitled to receive at the time of trial, either with or without a request, if the defendant can show a reasonable basis to believe the materials actually exist. (*Id.* at p. 899.)

Second, invoking a court's inherent power to grant defendants a right to impose preservation obligations on law enforcement and prosecution authorities would be inconsistent with legislative intent and confer jurisdiction where it does not otherwise exist. (See *In re Steele*, *supra*, 32 Cal.4th at p. 695 [concluding that, by enacting section 1054.9, the Legislature intended to grant defendant's a right to discovery of only materials currently in the possession of the authorities; it did not intend to impose any preservation duties]; *Johnson*, *supra*, 3 Cal.4th at pp. 1257-1258 [holding trial courts lack jurisdiction to issue a postconviction order for preservation of evidence in anticipation of habeas corpus proceedings].)

Morales contends that *Townsel* supports his position on this point by providing an analogous example of a statute conferring inherent powers. (Brief on the Merits, at pp. 22-23, 26.) He suggests that part of the holding in that case was that, even though Code of Civil Procedure section 206 did not expressly authorize the no-contact order, that section conferred the inherent authority to issue the order because it "served and facilitated" the court's ability to exercise the express powers granted under that section. (*Id.* at p. 23.) But that misreads *Townsel*. The inherent authority to limit the parties' ability to contact jurors after judgment did not spring from Code of Civil Procedure section 206; instead, this Court explained that that power arose prior to the enactment of that section, and was based on a court's otherwise-granted authority to control the proceedings to ensure the efficacious administration of justice. (*Townsel*, *supra*, 20 Cal.4th at pp. 1091-1094.) The holding in *Townsel* in this regard was that Code of Civil Procedure section 206 "*presupposes* the trial court will *retain jurisdiction* to resolve issues concerning an attorney's postverdict contact with jurors." (*Id.* at p. 1091, emphasis added; see also *id.* at pp. 1095-1095 [explaining that Code of Civil Procedure section 206 is not inconsistent with, and therefore does not abrogate, a trial court's inherent power to issue a postverdict no-contact order].) Therefore, *Townsel* is not a helpful analogy.

### 3. Morales's Policy Arguments Are Properly Addressed to the Legislature, Not to This Court

Morales protests that rejecting his jurisdictional argument would be unjust due to the substantial delay in the appointment of habeas counsel in death penalty cases. (Brief on the Merits, at pp. 23-27, 28-34.) He asserts that it normally takes several years (often more than ten years) before habeas counsel is appointed, and, therefore, before habeas counsel can

begin working on the case and seek discovery under section 1054.9 if necessary. (*Id.* at pp. 24, 32, citing *In re Jimenez* (2010) 50 Cal.4th 951, 955, *In re Morgan* (2010) 50 Cal.4th 932, 938-939, and *Jones v. Chappell* (C.D. Cal. 2014) 31 F.Supp.3d 1050, 1058, reversed on other grounds in *Jones v. Davis* (9th Cir. 2015) 806 F.3d 538.) Morales argues that, without the ability to obtain a preservation order, defendants face an unacceptable risk that they may not be able to recover evidence that might become lost or destroyed after trial, thereby resulting in "unfair prejudice to the defendant's habeas corpus rights . . . ." (Brief on the Merits, at p. 34.)[4]

This Court dismissed a similar argument as unpersuasive when it was raised in *Johnson*, and it remains unpersuasive today. Context is important, so it must be remembered that when a defendant seeks postconviction habeas corpus relief—an extraordinary and limited remedy—he is seeking to undermine a presumptively fair and valid criminal judgment. (*In re Reno* (2012) 55 Cal.4th 428, 450, citing *Gonzalez*, *supra*, 51 Cal.3d at p. 1260.) And the Constitution does not require "the full panoply of pretrial rights in collateral efforts to overturn a final conviction." (*Gonzalez*, *supra*, at p. 1258, citing *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556; accord

---

[4] Morales also suggests that policy 3, standard 1-1, of the Supreme Court Policies Regarding Cases Arising From Judgments of Death insinuates the need for jurisdiction to issue preservation orders. (Brief on the Merits, at p. 34.) That policy provides in relevant part that until separate habeas counsel is appointed, appellate counsel "shall preserve evidence" that comes to her attention "if that evidence appears relevant to a potential habeas corpus investigation." (Supreme Ct. Policies, policy 3, std. 1-1, as amended effective January 1, 2008.) This duty is an obligation imposed on appellate counsel, who maintains an attorney-client relationship with the defendant; it does not contemplate imposing any similar duty on prosecution or law enforcement authorities, or depend on the ability of counsel to impose such a duty by court order. Moreover, these obligations of appellate counsel are simply inapposite to the legal question of whether a court has jurisdiction over a particular matter.

*District Attorney's Office for Third Judicial Dist. v. Osborne* (2009) 557 U.S. 52, 69 [states have "more flexibility in deciding what procedures are needed in the context of postconviction relief"].) Accordingly, a defendant rightly shoulders the burden of demonstrating that he is entitled to this extraordinary relief, and the state "may properly require that a defendant obtain some concrete information on his own before he invokes collateral remedies against a final judgment." (*Gonzalez*, *supra*, at p. 1260.)

Another element of the context is the fact that the superior courts already are required to permanently retain records in capital cases, including records of the cases of any codefendants and any related cases. (Gov. Code, § 68152, subd. (a).) Moreover, law enforcement and prosecution authorities fail to preserve evidence at their peril. Some cases are reversed on appeal or collateral proceedings long after conviction, and may need to be retried. (See, e.g., *People v. Weatherton* (2014) 59 Cal.4th 589 [reversing guilty verdict in capital case twelve years after conviction due to juror misconduct]; *Bemore v. Chappell* (9th Cir. 2015) 788 F.3d 1151, 1177 [granting federal habeas relief thirty years after commission of offense, and directing state to reduce death sentence to LWOP or retry the penalty phase], petn. for cert. filed Dec. 1, 2015 (No. 15-722).) Therefore, law enforcement and prosecution authorities are already self-motivated to indefinitely preserve information related to capital cases.

More important, as discussed above, the Legislature chose not to grant the jurisdiction Morales now seeks. Section 1054.9 addresses a *potential* barrier to a defendant's effort to overturn a presumptively valid conviction, namely, the possibility in a given case that a defendant seeking to file a habeas petition cannot otherwise obtain the information defense trial counsel received at the time of trial, or was entitled to obtain from the prosecution at the time of trial. (See Pen. Code, § 1054.9, subd. (a) [requiring showing of good faith efforts to obtain discovery materials from

trial counsel were made and were unsuccessful]; *Barnett v. Superior Court, supra*, 50 Cal.4th at p. 898 [recognizing that defendant should be able to work with the prosecution informally to obtain copies of any missing discovery materials].) The Legislature's measured response to this issue was to provide an avenue to help defendants reconstruct defense attorneys' trial files, and also gain access to materials they should have or could have received during trial but for some reason did not. (*Id.* at pp. 897-899; *In re Steele, supra*, 32 Cal.4th at pp. 695-697.) However, the Legislature chose not to impose any additional preservation duties. (*In re Steele, supra*, at p. 695.) It was the prerogative of the Legislature to establish these jurisdictional boundaries; and a court may not invoke inherent authority, even if it thinks it would be a good idea, to confer jurisdiction upon itself. (*Riverside County Sheriff's Dept. v. Stiglitz, supra*, 60 Cal.4th at p. 636 ["A court has no authority to confer jurisdiction upon itself where none exists"].)

## II. MANDATE RELIEF WAS PROPER IN THIS CASE BECAUSE THE TRIAL COURT ISSUED AN UNLAWFUL ORDER, AND MANDATE LIES TO CORRECT AN ERROR OF LAW

Morales contends that, even if this Court concludes that trial courts do not have jurisdiction to issue postconviction orders for preservation of evidence, this point was unsettled at the time of the superior court's order in this case and therefore it did not have a "clear duty" to deny the motion such that mandamus relief was appropriate. (Brief on the Merits, at pp. 35-41.) The People agree with the Court of Appeal's response to this argument: "It is true that it is often said that mandate issues to compel a lower court or officer to perform a 'clear duty' (Code Civ. Proc., § 1085; see *City of King City v. Community Bank of Central California* (2005) 131 Cal.App.4th 913, 925) and of course it cannot control the exercise of discretion. (*City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740,

751.) But mandate is available to correct abuses of discretion (*Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780) and an error of law is an 'abuse of discretion' correctable by mandate. (*People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 746.) As we find a clear error of law, mandate will lie." (*People v. Superior Court (Morales)*, *supra*, Slip opinion, at p. 6; see, e.g., *Gonzalez*, *supra*, 51 Cal.3d at pp. 1256-1261 [granting mandate relief because trial court lacked jurisdiction to issue postconviction discovery order, without discussing whether that rule was clearly established].)

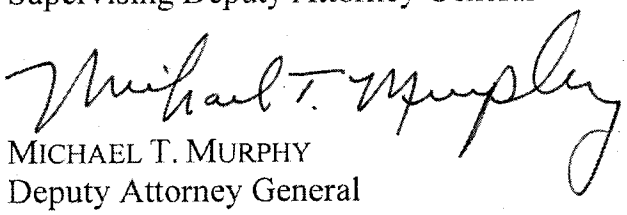
## CONCLUSION

Respondent respectfully requests that the decision of the Court of Appeal be affirmed.

Dated: January 26, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
DONALD DENICOLA
Deputy Solicitor General
HOLLY D. WILKENS
Supervising Deputy Attorney General



MICHAEL T. MURPHY
Deputy Attorney General
*Attorneys for Petitioner*

MTM:swm
SD2015701364
71160341.doc

## CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13-point Times New Roman font and contains 8,684 words.

Dated: January 26, 2016

KAMALA D. HARRIS
Attorney General of California

MICHAEL T. MURPHY
Deputy Attorney General
*Attorneys for Petitioner*

## DECLARATION OF SERVICE

Case Name: ***People v. Morales*** Case Number: **S228642**

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 January 26, 2016, I served the attached **ANSWER 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 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**C DELAINE RENARD**
**DEPUTY STATE PUBLIC DEFENDER**
**1111 BROADWAY 10TH FLR**
**OAKLAND CA 94607**

*Attorney for Real Party in Interest*
*Johnny Morales*
*(Two Copies)*

**CLERK OF THE COURT**
**FOR HON INGRID A UHLER**
**SAN BERNARDINO CO SUPER COURT**
**401 N ARROWHEAD AVE**
**SAN BERNARDINO CA 92415-0063**

**JOSEPH SCHLESINGER**
**EXECUTIVE DIRECTOR**
**CALIFORNIA APPELLATE PROJECT**
**101 SECOND ST STE 600**
**SAN FRANCISCO CA 94105**

**CALIFORNIA COURT OF APPEAL**
**FOURTH APPELLATE DIST DIV TWO**
**3389 TWELFTH ST**
**RIVERSIDE CA 92501**

**APPELLATE SERVICES UNIT**
**OFFICE OF THE DISTRICT ATTORNEY**
**303 W THIRD ST 5TH FLR**
**SAN BERNARDINO CA 92415-0511**

On January 21, 2016, I caused one electronic copy of the January 26, 2016, in this case to be served on the California Supreme Court by sending the copy to the Supreme Court's electronic service address pursuant to Rule 8.212(c).

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 January 26, 2016, at San Diego, California.

STEPHEN MCGEE
Declarant

Signature

SD2015701364
71159516.doc