S248730

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff-Respondent, v. JOSE LUIS PEREZ et al., Defendants-Appellants.	Case No. S248730 Court of Appeal No. E060438 San Bernardino County Case No. FVI901482

APPEAL FROM SAN BERNARDINO COUNTY SUPERIOR COURT
HONORABLE JOHN M. TOMBERLIN, TRIAL JUDGE

APPELLANT CHAVEZ'S REPLY BRIEF ON THE MERITS

REBECCA P. JONES, Esq.
California Bar No. 163313
3549 Camino del Rio S., Suite D
San Diego, CA 92108
(619) 269-7872

Attorney for Petitioner CHAVEZ
Appointed by the Court of Appeal
under Appellate Defenders, Inc.
Independent Case Program

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I.

CALIFORNIA'S CONTEMPORANEOUS OBJECTION RULE DOES NOT INCLUDE, AND SHOULD NOT INCLUDE, ANY REQUIREMENT THAT TRIAL COUNSEL FORESEE CHANGES IN THE LAW

Mr. Chavez and respondent agree that California law requires litigants to object in the trial court to preserve issues for appeal, unless an objection would be futile. [Respondent's Brief "RB" 18; Opening Brief on the Merits "OBM" 9-11.] But while Mr. Chavez argues that the foreseeability of a change in the law and futility are two distinct and unrelated concepts, respondent argues, "Futility and foreseeability are two sides of the same coin." [RB 20.] Respondent's legal authorities fail to support respondent's position. Further, respondent fails to address Mr. Chavez's policy arguments that linking foreseeability and futility is both unworkable and inefficient.

A. Sound policy considerations counsel against creating a new rule that attorneys must object every time the law is unsettled.

Respondent asks this Court to adopt a new rule – that failing to object results in forfeiture if the law is unsettled – without addressing any of the policy implications of such a rule, even though Mr. Chavez anticipated many of these concerns in his OBM at pages 27-31.

First, requiring counsel to object when the state of the law is unsettled would create an exceptionally vague rule. What does "unsettled" mean? Does it mean two published decisions exist on an issue and they disagree with each other? Does it mean 20 published decisions exist and they split equally on the answer to a given question? Does it mean every time an opinion contains dicta criticizing a previous holding that the law becomes unsettled? Is the law unsettled if 50 opinions exist on an issue and one court disagrees with the other 49? How are trial counsel supposed to know when the law is unsettled? "[S]tate procedural rules with overly vague standards do not provide petitioners with sufficient notice of how they may avoid violating the rule. Furthermore, poorly defined procedural rules do not provide courts the guidance required for consistent application." (*King v. LaMarque* (9th Cir. 2006) 464 F.3d 963, 966.)

Respondent fails to propose any mechanism for defining or applying its "unsettled law" rule.

Second, respondent's rule would require trial counsel to lodge innumerable meritless objections out of fear of forfeiting an argument or being found ineffective during post-conviction proceedings. Counsel would need to file more motions in limine, request more hearings under Evidence Code section 402, and object repeatedly during testimony to avoid forfeiture of any possible issue on appeal.

Third, requiring counsel to lodge objections in the face of unsettled law contradicts this Court's policy finding objections preserved when the question of waiver is "close and difficult." (See, e.g., *People v. Valdez* (2012) 55 Cal.4th 82, 129, fn. 30.) This Court has implemented that policy in both capital and non-capital cases: *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1007, fn. 8 [reaching issue when the law was unclear as to whether absence of an objection would bar consideration of claim on appeal]; *People v. Jablonski* (2006) 37 Cal.4th 774, 813 [applying policy to address voluntariness of defendant's statements]; *People v. Ayala* (2000) 23 Cal.4th 225, 271-273 [invoking policy to address challenge to ruling on admissibility of impeachment against non-testifying defense witness]; *People v. Bruner* (1995) 9 Cal. 4th 1178, 1183, fn. 5 [non-capital appeal addressing custody credits].

Fourth, respondent ignores the implications of an "unsettled law" rule for the trial courts ruling on objections. If "unsettled law" means "an objection

is not futile," then the trial courts must have some duty to sustain an objection in the face of unsettled law. When and how does is that duty triggered? Respondent offers no explanation.

Respondent proposes no way, much less an understandable and workable way, of determining when lawyers need to object in trial courts. Mr. Chavez asks this Court to hold that when case law requires a trial court to overrule an objection, that objection is futile.

B. Current law does not require counsel to foresee changes in the law.

Mr. Chavez explained in his Opening Brief on the Merits that the concept of foreseeability worked its way into this Court's forfeiture jurisprudence through comments showing objections were ***not*** forfeited and that this Court has never used foreseeability of a change in the law to find an objection forfeited. Respondent does not identify any case in which this Court has endorsed a substantive link between supposedly foreseeable changes in the law and forfeiture, nor does it identify any case in which this Court found a claim forfeited because a change in the law was foreseeable. Instead, respondent asks this Court to expand upon the holdings in *People v. Perez* (2018) 22 Cal.App.5th 201, and *People v. Blessett* (2018) 22 Cal.App.5th 903, and find that any time the law is unsettled, counsel has a duty to object or forever forfeit appellate consideration of the issue.

Respondent asks this Court to require counsel to object when the law is unsettled because "it will generally be foreseeable that an issue might ultimately be resolved in the defendant's favor." [RB 20.] No court has ever required counsel to object because some future decision might hold the objection has merit. Further, respondent's argument is built on a group of cases that connect the foreseeability of changes in the law to appellate rulings but do not rely on the foreseeability of a change in the law alone to find an appellate argument forfeited.

People v. Hoyos (2007) 41 Cal.4th 872, 890, addressed the retroactive application of foreseeable changes in substantive criminal law, not the forfeiture of evidentiary objections. Hoyos argued he lacked constitutionally sufficient notice of the special circumstances alleged in his case, not that he had a right to take advantage of changes in evidentiary law that occurred while his appeal was pending.

People v. Navarette (2003) 30 Cal.4th 458, 515, found the argument waived both because the defendant opened the door to the allegedly inadmissible testimony and because the defendant should have objected in the face of unsettled law. Notably, this Court's forfeiture ruling put much more weight on defense counsel's questions inviting this line of inquiry than on defense counsel's duty to foresee a change in the law.

In *People v. Andrade* (2015) 238 Cal.App.4th 1274, 1297, the court refused to excuse counsel's failure to object to the sufficiency of the evidence that a witness needed a support person. Appellate counsel argued that a change in the law in the kind of evidence needed to support such a showing excused the failure to object. The Court of Appeal found the change in the law governing the ***kind*** of evidence needed did not obviate the need to object to the ***sufficiency*** of the evidence, because prior settled law had required a sufficiency objection for 20 years.

In *Cadena v. Pacesetter Corp.*, 224 F.3d 1203 (10th Cir. 2000), the foreseeability of the change in the law was just part of the court's determination that the interests of justice did not excuse counsel's failure to object to a jury instruction and was not the only factor weighing in favor of forfeiture.

In *State v. Holder* (Ariz. 1987) 745 P.2d 141, the Arizona Supreme Court refused to apply *Batson v. Kentucky* (1986) 476 U.S. 79 [106 S.Ct. 1712, 90 L.Ed.2d 69] retroactively without a trial court objection, noting that the duty to object to racial discrimination during jury selection predated *Batson* and that *Batson* simply changed the procedure for ruling on the objections, not the necessity of making objections.

Even though the court in *Marrone v. State* (Alaska 1982) 653 P.2d 672,

found the defendant's objection to a jury instruction was forfeited in large part because of the supposed foreseeability of *Sandstrom v. Montana* (1979) 442 U.S. 510 [99 S.Ct. 2450, 61 L.Ed.2d 39], it also pointed out that the instruction in that case was different from that condemned in *Sandstrom*. (*Id.* at p. 675.) A foreseeable change in the law was not the only fact used to find forfeiture.

Respondent also asks this Court to rely on two federal habeas corpus cases to find that California requires objections based on foreseeable changes in the law. [RB 21, citing to *Hernandez v. Cowan* (7th Cir. 2000) 200 F.3d 995, 997, and *Engle v. Isaac* (1982) 456 U.S. 107, [102 S.Ct. 1558, 71 L.Ed.2d 783].] Neither should inform this Court's analysis, since federal habeas corpus procedural default rules are designed to maximize federal deference to state court judgments, a policy consideration that is irrelevant in this case.

Hernandez involved the state's attempt to avoid waiver of a procedural defense in a federal habeas case. There, even though the law on waiver changed after the district court proceedings, Judge Posner pointed out that the state had been arguing for years that other similarly situated habeas petitioners had procedurally defaulted their claims. The procedural default objection was hardly unknown to the state's attorneys – the exact same party seeking to avoid forfeiture on appeal – and the state's attorneys waived that objection by failing to make it. (*Hernandez v. Cowan, supra*, 200 F.3d at p. 997.)

Engle also dealt with procedural default in the federal habeas setting. That court explicitly declined to require attorneys to foresee changes in the law. (*Engle v. Isaac* (1982) 456 U.S. 107, 151 [102 S.Ct. 1558, 1584, 71 L.Ed.2d 783, 815].)

Respondent's cases fail to support its argument that counsel must object every time the law is unsettled. Furthermore, they fail to support the notion that futility and foreseeability are two sides of the same coin.

C. Respondent's attempted analogy to evidentiary ruling cases is irrelevant.

Respondent also tries to analogize to cases in which this Court has found that prior evidentiary rulings have not rendered an objection futile. Respondent writes, "Just as the defendants in these cases were obligated to raise their objections at trial because the grounds for them were legally available (that is, reasonably foreseeable and not foreclosed by existing law) at the time, here the state of the law at trial made it at least possible that an objection under state evidence law or the Confrontation Clause would succeed." [RB 22.] Respondent, however, misconstrues the relevance of these cases to Mr. Chavez's case.

In *People v. Wilson* (2008) 44 Cal.4th 758, 842, the defendant argued on appeal that he was wrongly precluded from questioning a key witness about his drug use. His co-defendant had objected at trial but Wilson had not, and

the trial court had left the door open to further questioning on the topic if the co-defendant called an expert to explain the effect such drug use would have on a person's ability to perceive and recall events. Thus, this Court found, the trial court's ruling on the co-defendant's request showed Wilson also could have laid the foundation for questioning the witness about his drug use. Mr. Chavez is not arguing that an objection is futile if the parties have discussed it and the trial court has left the door open to ruling in the defendant's favor.

In *People v. Linton* (2013) 56 Cal.4th 1146, 1206, this Court said, "Nothing suggests an objection and request for admonition would have been futile, given that defense counsel made other objections, some of which the trial court sustained." *Linton* says nothing about defense counsel believing an objection would have been futile because the trial court had overruled other similar objections.

In *People v. Blacksher* (2011) 52 Cal.4th 769, 823, this Court said, "We disagree that any objection would have been futile, given the clarity of case law on this subject and the fact that the court sustained at least one of defendant's objections during the prosecutor's cross-examination." Respondent is not arguing the confrontation clause case law was clear at the time of Mr. Chavez's trial; respondent argues it was unsettled and that even the unsettled state of the law required an objection.

In *People v. Thompson* (2010) 49 Cal.4th 79, 130, this Court refused to find an objection futile when the trial court offered a cautionary instruction in response to an objection to a different witness's testimony about a similar topic.

This Court found forfeiture for similar reasons in *People v. Bonilla* (2007) 41 Cal.4th 313, 355-356. There, because the trial court offered a cautionary instruction in response to the defendant's first objection to prosecutorial misconduct, this Court ruled that additional objections to alleged misconduct would not have been futile.

The only common theme among these cases appears to be that trial attorneys frequently make evidentiary objections that are overruled, but that fact does not relieve them from the duty to object. These cases do not demonstrate that Mr. Chavez had a duty to foresee this Court's *Sanchez* ruling or that his counsel would have had any reason to believe a confrontation clause objection would have been sustained.

By contrast, this Court recently found no forfeiture of an evidentiary objection when the trial court made stubbornly clear it was not going to rule in the defendant's favor. (*People v. Gomez* (2018) 6 Cal.5th 243, 286-287.)

In a recent death penalty case, this Court made a similar finding: "Although defense counsel did not articulate the constitutional basis of his

objection, he correctly brought to the court's attention the inappropriateness of the witnesses' expressions of revenge and the conflict they posed to the jury instructions. The trial court had expressed the view that this type of testimony was appropriate, and further objection would have been futile." (*People v. Penunuri* (2018) 5 Cal.5th 126, 166.)

In both *Gomez* and *Penunuri*, this Court found the objections had merit – i.e., the trial court erred, albeit harmlessly – yet it entertained the arguments on appeal because the trial court's behavior rendered objections futile. Contrary to respondent's argument, there are times when the case law is settled that an objection becomes futile.

This argument does not assist respondent.

II.

A CONFRONTATION CLAUSE OBJECTION TO THE EXPERT TESTIMONY IN 2013 WOULD HAVE BEEN FUTILE

Respondent contends that a confrontation clause object at the time of Mr. Chavez's 2013 trial would not have been futile, claiming (1) *People v. Sanchez* (2016) 63 Cal.4th 655 did not actually change the law very much; (2) *People v. Gardeley* (1996) 14 Cal.4th 605 did not actually establish confrontation clause law; and (3) published case law before Mr. Chavez's trial questioned the validity of prior confrontation clause law. These arguments lack

merit. Furthermore, judges throughout the country – including on this Court and on the U.S. Supreme Court – have labeled prior confrontation clause law as confusing. And respondent itself has conceded, recently, that a pre-*Sanchez* confrontation clause objection would have been futile.

This Court should reject all of respondent's arguments.

A. This Court and lower courts agree that *Sanchez* wrought a significant change in the law.

Respondent claims that this Court's opinion in *People v. Sanchez* "solidified previously unsettled law, rather than unforeseeably overruling settled precedent. In the years leading up to *Sanchez*, reasonable trial counsel would have considered it prudent, rather than futile, to raise a hearsay or Confrontation Clause objection." [RB 35.] Respondent tries to buttress this argument by saying this Court said it was "restoring the traditional distinction between and expert's testimony regarding background information and case-specific facts." [RT 37.]

Respondent's argument ignores footnote 13 in *Sanchez*, where this Court explained it was disapproving prior at least five of its prior cases, plus *Gardeley*.

Tellingly, the same court that decided Mr. Chavez's case recently held that *Sanchez* expressly overruled formerly binding precedent. (*In re Thomas* (2018) 30 Cal.App.5th 744, 762.) While *Thomas* addressed the retroactivity of

Sanchez to cases that are final on appeal, it remains persuasive on the question of whether *Sanchez* wrought a significant change in the law that would have rendered an objection in 2013 futile. (See also *People v. Veamatahau* (2018) 24 Cal.App.5th 68, 72 fn. 7; *People v. Flint* (2018) 22 Cal.App.5th 983, 996-997.)

No case has held that *Sanchez* was insignificant, and the only two published cases to suggest its holding was foreseeable are *Perez* and *Blessett.* This Court should reject this aspect of respondent's argument.

B. This Court and the lower courts treated *Gardeley* as controlling on the confrontation clause issue.

Respondent argues that *Gardeley* did not require courts to overrule confrontation clause objections because it was not a confrontation clause case. [RB 38.] But California courts repeatedly relied on *Gardeley* to conclude "out-of-court statements admitted as basis evidence [are] not admitted for their truth but only to help evaluate the expert's opinion, and for this reason the confrontation clause [does] not apply." (*People v. Hill* (2011) 191 Cal.App.4th 1104, 1129; *People v. Sisneros* (2009) 174 Cal.App.4th 142, 153–154; *People v. Ramirez* (2007) 153 Cal.App.4th 1422, 1426–1427; *People v. Cooper* (2007) 148 Cal.App.4th 731, 746–747. See also *People v. Bell* (2007) 40 Cal.4th 582, 608 [noting that jury instructions can prevent jurors from considering basis evidence for its truth].)

No California Supreme Court case before *Sanchez* overruled these cases and no case before *Sanchez* suggested that the lower courts' reliance on *Gardeley* to uphold the admission of expert testimony was misplaced.

C. Published law predating Mr. Chavez's trial did not hold that expert testimony would violate the confrontation clause.

Respondent argues that an objection would not have been futile at Mr. Chavez's trial because all the published confrontation clause decisions decided after *Williams v. Illinois* (2012) 567 U.S. 50 [132 S.Ct. 2221, 183 L.Ed.2d 89], *People v. Lopez* (2012) 55 Cal.4th 569, and *People v. Dungo* (2012) 55 Cal.4th 608 called into question the admissibility of expert hearsay. [RB 38-39.] Only two of the cases respondent cites for this argument predated Mr. Chavez's trial: *People v. Mercado* (2013) 216 Cal.App.4th 67 and *People v. Valadez* (2013) 220 Cal.App.4th 16. The problem with relying on either case for a futility argument is that their comments about *Williams, Lopez* and *Dungo* constituted dicta: Both cases affirmed the judgments by holding the challenged statements were not testimonial. Neither case needed or relied on the "not for the truth" analysis it its holding.

The binding rules of law established by this Court include those statements of common law rules and constructions of statutes that are necessary to the decision that the court actually reaches in particular cases. (See 9 Witkin, Cal. Procedure (3d ed. 1985), Appeal, § 783, p. 753 [collecting

cases].) Dicta on the other hand, are judicial "arguments and general observations, unnecessary to the decision." (*Ibid.*)

At the time of Mr. Chavez's trial, no published case had upheld a confrontation clause challenge to gang expert testimony. The Courts of Appeal had upheld confrontation clause challenges in *Lopez* and *Dungo*, but this Court depublished those opinions when it granted review. Furthermore, even the lower court opinions in *Lopez* and *Dungo* did not address the question of whether the experts' testimony was being offered to prove the truth of the matter.

D. Numerous judges have found *Williams v. Illinois* confusing and lacking precedential value.

Respondent's assertion that *Williams v. Illinois* provided an obvious roadmap for confrontation clause objections is significantly undermined by opinions from all over the country, including from the U.S. Supreme Court. In a dissent from the denial of certiorari in a recent confrontation clause case, *Stuart v. Alabama* (2018) ___U.S.___, 39 S.Ct. 36, 37, 202 L.Ed.2d 414, 415, U.S. Supreme Court Justice Neil Gorsuch lamented the fact that *Williams v. Illinois* had "sown confusion in courts across the country" by failing to clearly explain when expert testimony violates the confrontation clause. He cited to cases demonstrating this confusion, including uncertainty as to *Williams'* precedential value: See, e.g., *State v. Dotson* (Tenn. 2014) 450 S.W.3d 1, 68

("The Supreme Court's fractured decision in *Williams* provides little guidance and is of uncertain precedential value"); *State v. Michaels* (N.J. 2014) 219 N.J. 1, 31, 95 A.3d 648, 666 ("We find *Williams's* force, as precedent, at best unclear"); *United States v. Turner* (7th Cir. 2013) 709 F. 3d 1187, 1189; *United States v. James* (2d Cir. 2013) 712 F. 3d 79, 95.[1]

Two members of this Court found pre-*Sanchez* law confusing as well. Justice Liu noted in his dissent in *People v. Lopez* (2012) 55 Cal.4th 569 that Sixth Amendment Confrontation Clause jurisprudence is anything but clear. (*Id.* at p. 590, Liu, J., dissenting.) Justice Corrigan added in her dissent in *People v. Dungo* (2012) 55 Cal.4th 608, it "continues to evolve." (*Id.* at p. 648, Corrigan, J., dissenting.)

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[1] These were not the only cases to make such an observation: "[W]e agree with other jurisdictions that have concluded that its 'force, as precedent, [is] at best unclear.'" (*State v. Watson* (2018) 170 N.H. 720, 733 [185 A.3d 845, 855-856].) Other courts have likewise found *Williams* unhelpful when deciding Confrontation Clause issues. (See, e.g., *Jenkins v. United States* (D.C. 2013) 75 A.3d. 174, 176 ["We now hold that the splintered decision in *Williams*, which failed to produce a common view shared by at least five Justices, creates no new rule of law that we can apply in this case"]; *People v. Merritt* (Colo. Ct. App. 2014) 411 P.3d 102, 107 ["Given the absence of majority support for any of the reasoning behind the outcome of *Williams*, it provides no clear guidance as to the current state of the law regarding the testimony of experts whose opinions are based on forensic reports which they themselves did not prepare. . . . Thus, the holding in *Williams* is not entirely helpful"]; *Paredes v. State* (Tex.Crim.App. 2015) 462 S.W.3d 510, 516, fn. 3 [agreeing with Justice Breyer's assessment that in *Williams,* "neither the plurality nor the dissent answers [the question presented] adequately"].)

E. Respondent repeatedly has argued or conceded in other cases that *Sanchez* does constitute a major change in the law.

Despite its current arguments about the inevitability of *Sanchez*, respondent fought hard to prevent *Sanchez* from becoming the law of the land and recently conceded that it changed the law significantly.

In its *Sanchez* briefing before this Court, respondent argued that gang expert testimony explaining the basis for the expert's opinions did not violate the Confrontation Clause because (1) jurors were admonished not to consider that testimony for its truth; (2) the splintered opinions in *Williams* did not establish the expert basis testimony was offered for its truth; and (3) *Sanchez* was "indistinguishable" from *Gardeley*.

> True, some courts and commentators have questioned whether juries can draw a meaningful distinction between a statement offered for its truth and one offered to shed light on the expert's opinion. (See, e.g., *Williams*, *supra*, 132 S.Ct. at pp. 2268-2269 (conc. opn. of Kagan, J.); *People v. Hill, supra*, 191 Cal.App.4th at pp. 1129-1131 [noting jury will "often" be required to determine or assume the truth of the statement]; *People v. Goldstein* (2005) 6 N.Y.3d 119, 127-129 [843 N.E.2d 727, 810 N.Y.S.2d 100].) ¶ But in keeping with the long-standing tradition in California, other authorities have recognized there

is a legitimate distinction between the two.

(Answering Brief on the Merits, *People v. Sanchez,* at p. 30.)[2]

The state's *Sanchez* brief also conceded: "This court has not previously addressed whether expert basis testimony that is expressly limited in its admissibility for non-hearsay purposes nevertheless violates the confrontation clause." (Answering Brief on the Merits, *People v. Sanchez*, at p. 25.) These concessions established that the decision in *Sanchez* was far from inevitable and that trial counsel had no reason or duty to foresee its holding.

Moreover, in two recent unpublished cases, the state conceded that a *Sanchez* objection would have been futile in cases that post-dated Mr. Chavez's trial: *People v. Perez* (Jan. 22, 2019, No. F073736) ___Cal.App.5th___ [2019 Cal. App. Unpub. LEXIS 461] (charged crimes post-dated Mr. Chavez's trial); *People v. Coronado* (Nov. 13, 2018, No. F072867) ___Cal.App.5th___ [2018 Cal. App. Unpub. LEXIS 7740, at *26] (trial held in 2015).

In its informal briefing in *In re Thomas*, *supra*, the state argued that *Sanchez* worked a sea change in confrontation law: "the court effectively overruled its own precedents in *People v. Montiel* (1993) 5 Cal.4th 877

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[2] Mr. Chavez is filing a motion for judicial notice of the briefs in *People v. Sanchez*, *In re Thomas*, and *People v. Perez,* as well as for the unpublished opinions in *People v. Perez* and *People v. Coronado*, concurrently with this brief.

(*Montiel*) and *People v. Gardeley* (1996) 14 Cal.4th 605 (*Gardeley*)." The state used those arguments to successfully persuade the Court of Appeal to refuse to apply *Sanchez* to cases already final on appeal.

The binding law in effect at the time of Mr. Chavez's trial required the court to overrule any confrontation clause objections to the gang expert's testimony. Any objection to the contrary would have been futile.

III.

THIS COURT SHOULD NOT DECIDE THIS CASE ON THE MERITS OF MR. CHAVEZ'S *SANCHEZ* CLAIM

Finally, respondent argues the Court can decide this case on the alternate ground that the error was harmless. [RB 41.] This Court should not accept the invitation. The lower court did not rule on this issue; the issue should not be decided in this Court in the first instance.

In addition, under California Rules of Court, rule 8.516, "Unless the court orders otherwise," briefs and arguments must be limited to issues on which the Court has granted review "and any issues fairly included in them." If the Court decides issues beyond the grant, it must give the parties reasonable opportunity and opportunity to brief it. (Rule 8.516(b)(2).)

This Court granted review to address an important policy question regarding forfeiture and the contemporaneous objection rule. It explicitly declined to grant review to address Mr. Chavez' *Sanchez* claim on the merits,

which he raised in his petition for review as issue II. If this Court decides to expand its grant of review to include the merits of Mr. Chavez' *Sanchez* claim, Mr. Chavez requests notice and an opportunity to file supplemental briefing.

CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeal's opinion and remand the matter for a determination of prejudice.

Respectfully submitted,

Dated: March 4, 2019 By:_____

REBECCA P. JONES
Attorney for Appellant
EDGAR CHAVEZ NAVARRO

CERTIFICATE OF COMPLIANCE

I, Rebecca P. Jones, counsel for Edgar Chavez Navarro, certify pursuant to the California Rules of Court that the word count for this document is 4,852 words, excluding the tables, this certificate, and any attachment permitted under rule 8.360. This document was prepared in Word Perfect and this is the word count generated by the program for this document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed, at San Diego, California, on March 4, 2019.

Respectfully submitted,

By: _____

REBECCA P. JONES
Calif. Bar No. 163313
Attorney for Defendant-Appellant
EDGAR CHAVEZ NAVARRO

People v. PEREZ et al.
Case No. S248730

PROOF OF SERVICE (CCP 1013a, 2015.5)

I declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States and employed in the City and County of San Diego. I am over the age of eighteen (18) years and not a party to the within above-entitled action; my business address is 3549 Camino del Rio South, Suite D, San Diego, California 92108; on this date I mailed **APPELLANT CHAVEZ'S REPLY BRIEF ON THE MERITS** addressed as follows:

Edgar Ivan Chavez Navarro, AS4802
PVSP
PO Box 8500
Coalinga, CA 9321

San Bernardino Superior Court
Appeals Division
247 West 3rd Street
San Bernardino, CA 92415

Britt Imes, Esq.
Office of the District Attorney
14455 Civic Center Dr.
Victorville, CA 92392

I also served, via the TrueFiling system, the following parties:

Raymond Mark DiGuiseppe
Counsel for Perez

Attorney General
San Diego, CA 92186-5266

Appellate Defenders, Inc.

Court of Appeal
Fourth Appellate District
Division Two

Henry Russell Halpern
Counsel for Sandoval

The above copies were deposited in the United States mail, first class postage prepaid, at San Diego, California. I declare under penalty of perjury that the foregoing is true and correct. Executed March 4, 2019, at San Diego, California.

/s/ Rebecca P. Jones