

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, ) Court of Appeal  
Plaintiff and Respondent, ) No. D059840  
)  
v. ) Superior Court  
) No. SCD 226240  
DAVID LEON RILEY, )  
Defendant and Petitioner. )  
\_\_\_\_\_ )

APPEAL FROM THE SUPERIOR COURT  
OF SAN DIEGO COUNTY

Honorable Laura W. Halgren, Judge

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PETITIONER, DAVID RILEY'S REQUEST FOR  
JUDICIAL NOTICE AND PROPOSED ORDER  
\_\_\_\_\_

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THE PEOPLE OF THE STATE OF CALIFORNIA, ) Court of Appeal  
Plaintiff and Respondent, ) No. D059840  
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APPEAL FROM THE SUPERIOR COURT  
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Honorable Laura W. Halgren, Judge

\_\_\_\_\_  
REQUEST FOR JUDICIAL NOTICE  
\_\_\_\_\_

Pursuant to Rules 8.54(a), 8.520(g), and 8.252(a) of the California Rules of Court<sup>1</sup> and Evidence Code sections 452, subdivision (d) and 459, subdivision (a), petitioner requests that this Court take judicial notice of its own files, and particularly of the petitions for review, filed in the following prior proceedings: *People v. Montoya* (S224457); *People v. Quezada, Sierra, & Garcia* (S224372) [petition by petitioner Sierra]; *People v. Iuvale* (S218265); *People v. Robles* (S216892); *People v.*

\_\_\_\_\_  
<sup>1</sup> Further unspecified references to rules are to the California Rules of Court

*Barrientos* (S215657); *People v. Yanez* (S212391); *People v. Madrigal* (S212023); *People v. Mercado* (S211241); *People v. Aguilar* (S209226); *People v. Records* (S205495); *People v. Huevo* (S204962); *People v. Lewis* (S204103); *People v. Miller* (S186011). These records were not presented to the trial court (rule 8.252(a)(2)(B)), as they are relevant only to the present petition for review, and to the amicus curiae letter submitted by California Appellate Defense Counsel pursuant to rule 8.500(g)<sup>2</sup>; for that reason, the records also do not relate to postjudgment matters in this case (rule 8.252(a)(2)(c)).

This request is based on the petition for review in *People v. Riley* (No. S225382), the record on appeal in the *Riley* case, the independent amicus curiae letter sent by California Appellate Defense Counsel, and the following points and authorities (rule 8.54(a)(2)). A proposed order is attached. (Rule 8.252(a)(1).)

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<sup>2</sup> On Friday, May 1<sup>st</sup>, 2015, California Appellate Defense Counsel submitted an amicus curiae letter in support of a grant of the petition for review. The letter offers support through examples of ways the Court of Appeal routinely misapplies the harmless error standard described in *Chapman v. California* (1967) 386 U.S. 18, 24, which is the subject of the present petition.

## **Memorandum in Support of Request for Judicial Notice**

### **Procedural Background**

On February 19, 2015, the Division One of the Fourth District Court of Appeal issued an unpublished opinion in No. D059840, affirming petitioner Riley's judgment of conviction for numerous offenses. Petitioner has filed his petition for review. (S225382.) Amicus curiae's letter in support of that petition for review has been received by the court.

### **Argument**

#### **This Court's Files from Prior Proceedings Are a Proper Subject of Judicial Notice.**

Evidence Code section 459 provides that a "reviewing court may take judicial notice of any matter specified in Section 452." And under the cited statute judicial notice may be taken of the records of any court in the state. (Evid. Code, § 452, subd. (d).) Thus, it is proper for this court to take notice of petitions for review and related documents in its own files. (See, e.g., *Morris v. Chiang* (2008) 163 Cal.App.4th 753, 758, fn. 5 ["briefs in other cases"]; *Duggal v. G.E. Capital Communications Services, Inc.* (2000) 81 Cal.App.4th 81, 86 ["records of a California court"].)

#### **The Records Are Relevant to This Appeal.**

Of course, the subject of judicial notice must also be relevant to the current proceeding. (*People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6;

rule 8.252(a)(2)(A).) In petitioning for review, a petitioner’s task is not only to identify legal issues, but also to explain why they are “important.” (Cal. Rules of Court, rule 8.500(b)(1).) In his petition for review, petitioner Riley argues that his case is important and worthy of review because of the Court of Appeal’s improper approach to the question of prejudice under federal constitutional standards. The amicus curiae letter filed by California Appellate Defense Counsel is intended to show that the improper approach used in Mr. Riley’s case is symptomatic of a wider problem with how the Courts of Appeal in general are approaching that issue. The cases that are the subject of this request for judicial notice are evidence of the widespread problem. Because the petitions for review in those cases are relevant to the petition for review and support the amicus letter but are not part of the record in this case, judicial notice is appropriate.

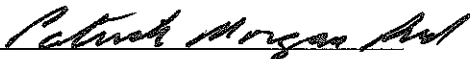
### **Conclusion**

For the foregoing reasons, petitioner requests that this court take judicial notice of its own files, particularly including the petitions for review, in *People v. Montoya* (S224457); *People v. Quezada, Sierra, & Garcia* (S224372) [petition by petitioner Sierra]; *People v. Iuvale* (S218265); *People v. Robles* (S216892); *People v. Barrientos* (S215657);

*People v. Yanez* S212391); *People v. Madrigal* (S212023); *People v. Mercado* (S211241); *People v. Aguilar* (S209226); *People v. Records* (S205495); *People v. Huevo* (S204962); *People v. Lewis* (S204103); *People v. Miller* (S186011).

Dated: 5/5/15

Respectfully submitted,

  
PATRICK MORGAN FORD,  
Attorney for Petitioner  
David Riley

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Court of Appeal
Plaintiff and Respondent,	)	No. D059840
	)	
v.	)	Superior Court
	)	No. SCD 226240
DAVID LEON RILEY,	)	
Defendant and Petitioner.	)	<b>Order Granting</b>
<hr/>	)	<b>Request for</b>
	)	<b>Judicial Notice</b>

Petitioner’s request for judicial notice is hereby granted. This court hereby takes notice of its own files, including the petitions for review, in *People v. Montoya* (S224457); *People v. Quezada, Sierra, & Garcia* (S224372) [petition by petitioner Sierra]; *People v. Iuvale* (S218265); *People v. Robles* (S216892); *People v. Barrientos* (S215657); *People v. Yanez* S212391); *People v. Madrigal* (S212023); *People v. Mercado* (S211241); *People v. Aguilar* (S209226); *People v. Records* (S205495); *People v. Huevo* (S204962); *People v. Lewis* (S204103); *People v. Miller* (S186011).

Dated:

\_\_\_\_\_  
Chief Justice

**DECLARATION OF SERVICE BY U.S. MAIL AND  
ELECTRONIC SERVICE**

I, Esther F. Rowe, say: I am a citizen of the United States, over 18 years of age, and employed in the County of San Diego, California, in which county the within-mentioned delivery occurred, and not a party to the subject case. My business address is 1901 First Avenue, Suite 400, San Diego, CA 92101. I served a *Request for Judicial Notice*, of which a true and correct copy of the document filed in the case is affixed, by placing a copy thereof in a separate envelope for each addressee respectively as follows:

Deputy District Attorney  
330 W. Broadway  
Eleventh Floor  
San Diego, CA 92101

Hon. Laura W. Halgren  
San Diego County Courthouse  
Dept. 38  
220 West Broadway  
San Diego, CA 92101

David Leon Riley, #AK2503  
Kern Valley State Prison  
P.O. Box 3130  
Delano, CA 93216

Additionally, I electronically served a copy of the above document as follows: 1) Court of Appeal electronic notification address, [4d2nbrief@jud.ca.gov](mailto:4d2nbrief@jud.ca.gov), and 2) Attorney General's electronic notification address, [ADIEService@doj.ca.gov](mailto:ADIEService@doj.ca.gov), I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on May 5, 2015, at San Diego, California.

  
\_\_\_\_\_  
Esther F. Rowe