

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
4/26/2024 9:56 AM  
BY ERIN L. LENNON  
CLERK

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
FERNANDO GUTIERREZ,  
  
Appellant.

No. 102892-0  
COA No. 37557-9-III

MOTION TO  
SUPPLEMENT THE  
RECORD

**1. IDENTITY OF MOVING PARTY**

The State of Washington, respondent in this appeal, moves for the relief designated in Part 2.

**2. STATEMENT OF RELIEF SOUGHT**

Pursuant to the Court's letter of April 25, 2024, the State asks the supplemental designation of clerk's papers filed by the State

simultaneously with its response to the petition for review in this case be accepted.

### **3. FACTS RELEVANT TO MOTION**

In the intervening time between the Court of Appeals decision in this case and the petition for review the Supreme Court decided *State v. Zamora*, 199 Wn.2d 698, 701, 512 P.3d 512, 515 (2022). In his petition for review Mr. Gutierrez cites the *Zamora* case and urges that his case falls squarely within its reach. The State disagrees with this proposition and seeks to add the State's motions in limine to the record on review demonstrating a significant difference in the cases. To accomplish this the State filed a supplemental designation of clerk's papers simultaneous with its filing of its response to its petition for review. The Supreme Court Clerk responded via letter that a motion to supplement the record was required.

### **4. GROUNDS FOR RELIEF AND ARGUMENT**

Mr. Gutierrez cites to *Zamora* and says his case is similar. However, as the Court of Appeals stated in Mr. Gutierrez's co-defendant's case, the issue in *Zamora* was State sponsored race discrimination. *State v. Rodriguez*, 37522-6-III, 2024 WL 859323, at \*7 n. 4 (Wash. Ct. App. Feb. 29, 2024)(unpublished). Thus the State's motion in limine seeking to avoid this issue, and Mr. Gutierrez's insistence on raising it and exploiting it, is central to the State's argument in this case that *Zamora* is inapplicable. One aspect of that is the State's opening motion in limine. This motion should be before the Court to help it address an argument that was not before the Court of Appeals in the form it is now in in the petition for review. For this reason, the State's motion to supplement the record should be granted.

In addition, the State respectfully takes issue with the Clerk's overly narrow interpretation of the word "brief" in RAP 9.6. RAP 9.6 allows a party to designate clerk's papers up to the filing of a party's last brief. The Clerk has interpreted this

rule in such a way as to exclude petitions for review and their responses from the definition of the word “brief.” But they are functionally briefs, containing facts, citations to law, arguments and requests for relief, as any brief does. RAP 1.2(a) requires the rules to be liberally interpreted to promote justice and facilitate decisions on the merits. A response to a petition for review easily falls under the definition of the word “brief”, even under a normal interpretation of the word, much less a liberal one. In addition, if review is granted, the parties will be able to file supplemental “briefs”. RAP 13.7(d). Thus the rules clearly contemplate “briefs” beyond the ones filed in the Court of Appeals. Therefore, the State’s supplemental designation of clerk’s papers was timely in any event, having been filed simultaneously with the State’s last brief, specifically its Response to the Petition for Review.

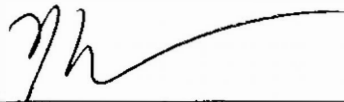
## **5. CONCLUSION**

The State's motion to supplement the record should be granted to allow the State to completely address an issue that has evolved since the Court of Appeals briefs were filed. In any event the State's designation was timely under RAP 9.6. The motion to supplement the record should be granted.

This document contains 606 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 26th day of April 2024.

Respectfully submitted,  
By:



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## CERTIFICATE OF SERVICE

On this day I served a copy of the State's Motion to Supplement the Record in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

Nancy P. Collins  
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Dated: April 26, 2024.

  
\_\_\_\_\_  
Janet Millard

# GRANT COUNTY PROSECUTOR'S OFFICE

April 26, 2024 - 9:56 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,892-0  
**Appellate Court Case Title:** State of Washington v. Fernando Marcos Gutierrez  
**Superior Court Case Number:** 18-1-00326-4

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