

---

STATE OF WASHINGTON,	)	
Respondent,	)	No. 102892-0
	)	
v.	)	ANSWER TO
	)	MOTION TO
FERNANDO GUTIERREZ,	)	SUPPLEMENT THE
Petitioner.	)	RECORD
	)	

---

I. IDENTITY OF MOVING PARTY AND RELIEF REQUESTED.

In response to the State’s motion to supplement the record so that it may provide additional facts in its answer to the petition for review, Mr. Gutierrez asks this Court either to permit him the opportunity to file a brief reply to this representation of the facts in the State’s answer to the petition for review, or to deny the State’s request and strike the

prosecution's references to additional information from its  
answer to the petition.

## II. GROUND FOR RELIEF AND ARGUMENT.

As the prosecution recognizes in its motion to supplement the record, this Court issued its decision in *State v. Zamora*, 199 Wn.2d 698, 512 P.3d 512 (2022), while Mr. Gutierrez’s appeal was pending. *Zamora* was decided after the Court of Appeals issued its decision in this appeal, at a time when this case was stayed pending the outcome of an unrelated case involving a sentencing issue.

Although Mr. Gutierrez did not raise the same issue of prosecutorial misconduct in his direct appeal as *Zamora*, his appeal involves an issue of juror bias premised on considerations of illegal immigration arising during a voir dire that bears similar hallmarks to those at issue in *Zamora*.

The prosecution’s answer to Mr. Gutierrez’s petition for review cites to a previously undesignated motion and it argues this motion as grounds for denying review. Mr. Gutierrez

believes this representation of the facts is incomplete and inaccurate.

RAP 9.6 prohibits designation of clerk's papers after a party has filed their last brief. Based on this rule, Mr. Gutierrez did not add any additional information to the record in his petition for review. The prosecution contends this rule should not be construed to apply to answers to petitions for review. Counsel is unaware of any cases in which that interpretation of the rule has been applied.

If this Court permits the prosecution to designate additional information and use that information in its answer to the petition for review, Mr. Gutierrez asks for the opportunity to provide a brief reply addressing those facts. Alternatively, Mr. Gutierrez asks this Court to deny the request to supplement the record and strike references to undesignated materials from the answer to the petition for review.

V. CONCLUSION.

Mr. Gutierrez respectfully requests this Court permit him to file a brief reply to the State's answer or deny the State's request to supplement the record and strike any arguments based on this additional information.

Counsel certifies this brief complies with RAP 18.17 and contains 409 words.

DATED this 26th day of April 2024.

Respectfully submitted,



---

NANCY P. COLLINS (28806)  
Washington Appellate Project (91052)  
Attorneys for Appellant  
nancy@washapp.org  
wapofficemail@washapp.org

## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 102892-0**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Kevin McCrae, DPA  
[kmcrae@grantcountywa.gov]  
Grant County Prosecutor's Office  
[jmillard@grantcountywa.gov]
- petitioner
- Attorneys for other party



MARIA ANA ARRANZA RILEY, Paralegal  
Washington Appellate Project

Date: April 26, 2024

# WASHINGTON APPELLATE PROJECT

April 26, 2024 - 4:18 PM

## 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

### The following documents have been uploaded:

- 1028920\_Answer\_Reply\_20240426161743SC884306\_5701.pdf  
This File Contains:  
Answer/Reply - Answer to Motion  
*The Original File Name was washapp.042624-03.pdf*

### A copy of the uploaded files will be sent to:

- greg@washapp.org
- jmillard@grantcountywa.gov
- kjmccrae@grantcountywa.gov
- wapofficemai@washapp.org

### Comments:

---

Sender Name: MARIA RILEY - Email: maria@washapp.org

**Filing on Behalf of:** Nancy P Collins - Email: nancy@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 610  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20240426161743SC884306**