

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
CLERK'S OFFICE  
Apr 01, 2016, 3:06 pm

RECEIVED ELECTRONICALLY

No. 92828-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

(Court of Appeals No. 47315-1-II)

---

RAFAEL GUTIERREZ MEZA,

Petitioner,

v.

STATE OF WASHINGTON,

Appellee.

---

MOTION FOR LEAVE TO FILE REPLY TO  
"RESPONSE TO PETITION FOR REVIEW"

---

Timothy K. Ford, WSBA #5986  
MacDONALD HOAGUE & BAYLESS  
705 2nd Avenue, Suite 1500  
Seattle, WA 98104  
(206) 622-1604

ATTORNEYS FOR PETITIONER

 ORIGINAL

### **A. IDENTITY OF MOVING PARTY**

Rafael Meza, the Petitioner herein and the Appellant in the Court of Appeals, seeks the relief set forth in Part B of this Motion

### **B. RELIEF REQUESTED**

Petitioner seeks leave to file a Reply to the “Response to Petition for Review,” which argues that the pending Petition is not a Petition for Review governed by RAP 13.4 but is a Motion for Discretionary Review governed by RAP 13.5.

### **C. FACTS UNDERLYING MOTION**

This Petition seeks review of a final, published Order of the Court of Appeals, reversing a trial court’s order freezing Rafael Meza’s credit union account, on discretionary review. *See State v. Meza*, 191 Wn. App. 849, 364 P.3d 1081 (2015). Although the Court of Appeals reversed the challenged trial court order on one ground, it did not reach and reserved judgment on two additional arguments which would have produced a different and broader result. Mr. Meza moved for reconsideration, asking the Court of Appeals to address those reserved issues, and filed this Petition for Review when that reconsideration was denied. *See* Petition at 6-7.

The Clerk docketed this case as a Petition for Review, and charged filing fees and set answer deadlines accordingly. However, on March 29,

2016, the State filed a “Response to Petition for Review” which argued, among other things, that this was not properly styled as a Petition for Review but was actually a Motion for Discretionary Review governed by the standards of RAP 13.5. On that basis, Respondent declined to address whether review is appropriate under RAP 13.4. Response at 4.

If Respondent were correct, Petitioner would be entitled to file a Reply to the Response under RAP 17.4(e). If Petitioner is correct, a Reply would not be permitted under RAP 13.4(d). Petitioner is therefore seeking leave to file a Reply, to clarify this procedural issue.

Also, on March 30, 2016, the Supreme Court of the United States issued a decision which is directly on point with regard to one of the issues raised by the Petition. *Luis v. United States*, \_\_\_ U.S. \_\_\_, U.S.S.Ct. No. 14-419 (decided March 30, 2016). Petitioner is also seeking leave to file this Reply to bring that decision to the Court’s attention.

#### **D. ARGUMENT SUPPORTING REVIEW**

Respondent has argued—incorrectly, we submit—that this is properly denominated a Motion for Discretionary Review rather than a Petition for Review. If the Respondent were correct, Petitioner would be entitled to submit a Reply within three days of the filing and service of the Answer (RAP 17.4(e)), as this Motion is.

Petitioner believes this is correctly denominated as a Petition for Review governed by RAP 13.4. If that is correct, no Reply is permitted except with regard to issues that are not raised in the Petition for Review. *See* RAP 13.4(d). However, the Court has authority to waive or alter the provisions of these rules in order to serve the ends of justice. RAP 18.8(a). The Court should exercise its discretion and allow Petitioner to file a brief Reply, to clarify this procedural issue and call to the Court's attention a new United States Supreme Court decision which directly addresses one of the issues this Petition presents.

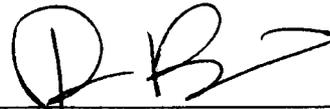
**E. CONCLUSION**

Petitioner should be permitted to file a Reply to the State's "Response to Petition for Review."

DATED this 1 day of April, 2016.

Respectfully submitted,

MacDONALD HOAGUE & BAYLESS

By   
Timothy K. Ford, WSBA #5986  
Attorneys for Petitioner

CERTIFICATE OF SERVICE

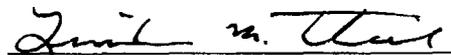
I certify that on the date noted below I caused to be filed electronically this forgoing document entitled **MOTION FOR LEAVE TO FILE REPLY TO "RESPONSE TO PETITION FOR REVIEW"** with the Clerk of the Court, and I also served a copy on all parties or their counsel of record as follows:

Counsel for State of Washington

Sheila Weirth  
Deputy Prosecuting Attorney  
Jonathan L. Meyer, Lewis County Prosecuting Attorney  
345 W. Main Street, 2<sup>nd</sup> Floor  
Chehalis, WA 98532  
Fax: (360) 740-1497

- Via Facsimile
- Via First Class Mail
- Via Email
- Via Messenger
- Via Overnight Delivery

DATED this 1<sup>st</sup> day of April, 2016, at Seattle, Washington.

  
Linda M. Thiel, Legal Assistant

## OFFICE RECEPTIONIST, CLERK

---

**To:** Linda Thiel  
**Subject:** RE: Meza v. State of Washington, No. 92828-2

Received 4-1-16

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Linda Thiel [mailto:LindaMT@mhb.com]  
**Sent:** Friday, April 01, 2016 3:07 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Sheila.Weirth@lewiscountywa.gov; Tim Ford <TimF@mhb.com>; Linda Thiel <LindaMT@mhb.com>  
**Subject:** Meza v. State of Washington, No. 92828-2

Attached please find a Motion for Leave to File Reply to "Response to Petition for Review" and [Proposed] Reply to "Response to Petition for Review". Thank you.

*Linda M. Thiel*

Legal Assistant  
MacDonald Hoague & Bayless  
705 2nd Avenue, Suite 1500  
Seattle, WA 98104  
tel: 206-622-1604  
fax: 206-343-3961  
email: [lindamt@mhb.com](mailto:lindamt@mhb.com)

This communication may contain confidential, privileged information intended for the addressee. Do not read, copy or disseminate it unless you are the addressee. If you have received this email in error, please call me (collect) immediately at 206-622-1604 and then permanently destroy this communication.