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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.

[PROPOSED]
REPLY TO "RESPONSE TO PETITION FOR REVIEW"

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I. THIS IS PROPERLY DENOMINATED A PETITION FOR REVIEW GOVERNED BY RAP 13.4.

The State argues that the present Petition is actually a Motion for Discretionary Review governed by RAP 13.5, so that the factors governing review under RAP 13.4(b) do not apply. *See* Response to Petition for Review (“Response”) at 3-4. The State says this because “Meza’s case is in interlocutory appeal....” *Id.* at 4.

This argument misreads the rules. RAP 13.5(a) provides that a Motion for Discretionary Review is the appropriate mechanism for review “of an interlocutory *decision* of the Court of Appeals....” (Emphasis added.) The decision of the Court of Appeals this Petition seeks to have reviewed was a “decision terminating review,” and was therefore governed by RAP 13.4(a). The fact that decision terminating review was entered in an interlocutory appeal does not make it “an interlocutory decision of the Court of Appeals....” under RAP 13.5(a).

An “interlocutory decision” is any decision by this court which is not a “decision terminating review”. A “decision terminating review” is defined as having three characteristics: (1) it is filed after review is accepted by the appellate court filing the decision, (2) it terminates review unconditionally, and (3) it is “(i) a decision on the merits, or (ii) a decision by the judges dismissing review, or (iii) a ruling by a commissioner or clerk dismissing review, or (iv) an order refusing to modify a ruling by the commissioner or clerk dismissing review”. RAP 12.3(a)(3).

In re Pers. Restraint Petition of Lord, 123 Wash. 2d 737, 739, 870 P.2d 964, 966 (1994). The decision below has all those characteristics. The

fact that the underlying review was granted interlocutorily does not change the fact the Court of Appeals' decision terminated that review on the merits.

**II. *LUIS V. UNITED STATES*, ___ U.S. ___ (March 30, 2016)
SUPPORTS PETITIONER'S ARGUMENT FOR REVIEW.**

The Supreme Court's very recent decision in *Luis v. United States*, ___ U.S. ___, 2016 WESTLAW 1228690 (U.S.S.Ct. No. 19-419, decided March 30, 2016) underscores the appropriateness of this Court's review of the second issue raised in this case. *See* Petition at 12-14. In *Luis* the Court held that pretrial seizure of untainted assets needed to hire defense counsel violates the Sixth Amendment. It did so in two plurality opinions which applied somewhat different rationales. Justice Breyer wrote for four justices that the government's interest in seizing untainted assets is outweighed by a defendant's right to counsel of choice. *Id.* at *10-*12. Justice Thomas wrote separately that the Sixth Amendment and common law history place an absolute bar against the seizure of untainted assets needed to pay for a defense. *Id.* at *19-*20.

The application of *Luis*'s Sixth Amendment reasoning to this case, and the specific rationale applied, could significantly alter the outcome of the proceedings below and the appropriate remedy for the trial court's error. *See* Petition at 14. *Luis* underscores the importance of this

constitutional issue and the need for this Court's clarification of it, for purposes of this state's law.

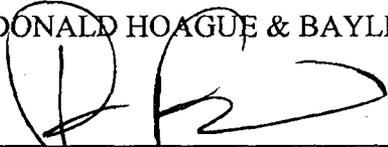
CONCLUSION

This Petition should be considered under RAP 13.4. The State should be ordered to file a Response to Petitioner's arguments that review is appropriate here under the criteria set forth in RAP 13.4(b). The Supreme Court's decision in *Luis v. United States* should be considered in conjunction with those considerations, and particularly those set out in RAP 13.4(b)(3) and (4).

DATED this 1 day of April, 2016.

Respectfully submitted,

MacDONALD HOAGUE & BAYLESS

By 

Timothy K. Ford, WSBA #5986
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CERTIFICATE OF SERVICE

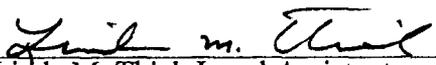
I certify that on the date noted below I caused to be filed electronically this forgoing document entitled **REPLY TO "RESPONSE TO PETITION FOR REVIEW"** with the Clerk of the Court, and I also served a copy on all parties or their counsel of record as follows:

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DATED this 15th day of April, 2016, at Seattle, Washington.


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