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SAN FRANCISCO

VOLUNTEER LEGAL SERVICES PROGRAM

vlsp Changing Lives

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May 18, 2011

The Honorable Tani Cantil-Sakauye
Chief Justice, and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

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**RE: People v. Beltran, Case Number S192644
Amicus Curiae Letter Supporting Petition for Review**

Honorable Justices of the California Supreme Court:

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Laura Chiera
Staff Attorney, HAP

Pursuant to the California Rules of Court, rule 8.500(g), in my capacity as supervising attorney for family law at the Volunteer Legal Services Program of the Bar Association of San Francisco, I respectfully submit this letter in support of the petition for review in the above referenced case.

The Volunteer Legal Services Program (VLSP) represents low-income clients in family law matters, many of which involve domestic violence. In the above case, appellant Tare Beltran had a long and documented history of committing acts of domestic violence against the victim, whom he ultimately stabbed to death in front of her children. The jury in the trial court convicted Beltran of second degree murder. The defense pleaded for a conviction of manslaughter, alleging that Beltran had been provoked into his murderous rage by the victim's assertion she had been pregnant with and had aborted his baby without his knowledge.

It is of great concern to us that the California Court of Appeal has reversed the conviction based on what we believe to be an erroneous analysis of the degree of provocation necessary to negate malice and reduce the degree of homicide to voluntary manslaughter. The jury in this case was given the following instruction on the issue of provocation: "In deciding whether the provocation was sufficient, consider whether a person of average disposition would have been provoked and how such a person would react in the same situation knowing the same facts." The appellate court found this instruction to be "at least ambiguous, if not misleading," and therefore reversed the conviction.



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This defendant was not someone of "average disposition" but rather a chronic and frequent domestic violence offender. Domestic violence offenders frequently blame their victims for provoking them in an effort to reduce their culpability, whether in trying to avoid the issuance of a restraining order, or as in this case, trying to reduce the conviction to manslaughter. And it is particularly troubling that a woman's comments about her abortion should even be considered as a basis for provocation.

This case raises very important issues about homicides related to domestic violence and the degree to which domestic violence is interpreted by the courts as a mitigating factor. It therefore merits the review of the California Supreme Court.

Sincerely,

Nicholas Baran
Supervising Attorney



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PROOF OF SERVICE

In the Matter of :

People v Beltran, Case #S1926444

I, the undersigned declare:

I am an attorney licensed to practice law by the Supreme Court of the State of California, and that my business address is VLSP, 301 Battery St. 3rd Flr, San Francisco, CA 94111

I served a true copy of the attached document:

Amicus Curiae Letter Supporting Petition for Review

by delivering it by mail to the following parties:

Representing The People:

Jeffrey Laurence
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455 Golden Gate Avenue, #11000
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Representing Defendant and Appellant Tare Nicholas Beltran

Linda Leavitt
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San Francisco, CA 94131

Representing Pub/Depub Requestor Joseph Caldwell

Catherine White
12 Geary St, #502
San Francisco, CA 94108

Executed this day of May 18, 2011, at San Francisco, CA.

Nicholas Baran
Attorney at Law