

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

MARK BUZA,

Defendant and Appellant.

Case No. S223698

First Appellate District, Division Two, Case No. A125542
San Francisco County Superior Court, Case No. 207818
The Honorable Carol Yaggy, Judge

**APPLICATION TO FILE REPLY BRIEF ON THE MERITS IN
EXCESS OF 8,400 WORDS**

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TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE:

Rule 8.520(c)(1) and (4) provide that a reply brief on the merits shall not exceed 8,400 words unless, based on good cause, the Chief Justice grants a party's application to file a longer brief. The People of the State of California, respondent herein, respectfully request leave to file an oversized reply brief of 17,061 words, submitted concurrently with this application, based on the following showing of good cause:

This important case involves complex legal and factual matters that warrant detailed discussion in respondent's reply brief on the merits. Appellant Mark Buza's answer brief on the merits is 100 pages and consists of 27,770 words, more than 7,000 words longer than respondent's opening brief on the merits and just under twice the normal limit for answer briefs.

In addition to discussing the legal issues presented in respondent's petition for review and addressed in the opening brief—the constitutionality of the arrestee provisions of California's DNA Act under the Fourth Amendment and article I, section 13 of the California Constitution—Buza also urges this court to strike down the DNA Act under the separate privacy provision in article I, section 1 of the California Constitution.

To adequately respond to the arguments in the answer brief, respondent must address numerous legal issues, including the following: First, respondent must explain why the United States Supreme Court's decision in *Maryland v. King* (2013) ___ U.S. ___ [133 S.Ct. 1985] resolves Buza's Fourth Amendment challenge to the DNA Act, notwithstanding Buza's attempts to distinguish that case. (See ABOM 15-19, 65-99.) Second, with respect to Buza's challenge under article I, section 13 of the California Constitution, respondent must address this court's general principle of following United States Supreme Court decisions concerning parallel constitutional provisions, and discuss each of

the cases cited by Buza to show why none of them supports his arguments here. (See ABOM 20-40.) Third, respondent must address Buza's argument that the DNA Act is unconstitutional when measured against existing state constitutional doctrine. (See ABOM 21-23, 41-93.) This involves applying the balancing analysis required by this court's precedents, including reviewing the important public interests served by collecting DNA identifying information from adult felony arrestees at booking; responding to Buza's arguments that those arguments are not substantial or are not served by the DNA Act; and addressing Buza's arguments concerning the incremental intrusion on arrestees' privacy interests. Fourth, respondent must address Buza's argument that the DNA Act violates the privacy clause in article I, section 1, a question that was not raised in any petition for review or answer. (See, e.g., ABOM 1, 65.)

In making the above arguments, respondent must discuss numerous factual matters raised in Buza's answer brief, including its discussion of the mechanics of California's process for collecting and analyzing DNA samples, California's process for expunging DNA samples and information at the request of arrestees who are not charged or convicted, arrest statistics, and so forth. (See, e.g., ABOM 10-12 [discussing the "mechanics of DNA testing in California"]; ABOM 43, fn. 23 [addressing whether DNA profiles reveal genetic traits]; ABOM 13-14 & fns. 9-11, 67 & fn. 38, 76-78 & fns. 45-46 [discussing arrest statistics].)

The legal and factual issues presented in Buza's lengthy answer brief cannot be adequately addressed within the standard 8,400-word limit. Respondent has attempted to address these issues in a succinct fashion, but nonetheless has been unable to comply with the word limit while providing the sort of thorough treatment we believe will be most helpful to the court.

Accordingly, for good cause, respondent requests leave to file an oversized brief.

Dated: October 16, 2015

Respectfully submitted,
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A handwritten signature in black ink, appearing to read "M. J. Mongan". The signature is written in a cursive style with a large, looping "M" and "J".

MICHAEL J. MONGAN
Deputy Solicitor General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *People v. Mark Buza*
No.: **S223698**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 16, 2015, I served the attached **APPLICATION TO FILE REPLY BRIEF ON THE MERITS IN EXCESS OF 8,400 WORDS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 16, 2015, at San Francisco, California.

Elza Moreira

Declarant



Signature