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DEPARTMENT OF JUSTICE



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November 1, 2013

The Honorable Frank A. McGuire, Clerk
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

SUPREME COURT
FILED

NOV - 1 2013

Frank A. McGuire Clerk

Deputy

RE: *People v. Richard Tom, In re Tom* (S202107)
San Mateo County Superior Court, Case No. SC064912
First District Court of Appeal, Case Nos. A124765, A130151

Dear Mr. McGuire:

On October 2, 2013, the Court invited the parties to submit supplemental briefs “addressing how, if at all, the instant matter is affected by the United States Supreme Court decision in *Salinas v. Texas* (2013) ___ U.S. ___ [133 S.Ct. 2174].” The Court requested simultaneous briefs be filed by October 17, 2013, and provided that simultaneous letter replies may be served and filed on or before the 15th day after the last timely supplemental brief was filed. Respondent filed a supplemental brief on October 15, and appellant filed a supplemental brief on October 17. This letter is our reply to appellant’s supplemental brief.

In the first part of his supplemental brief, appellant argues that *Salinas* is distinguishable because it did not address circumstances where an individual is silent after having been detained by the authorities. We disagree with his interpretation of *Salinas*. As discussed in our supplemental brief, the holding of *Salinas* requiring an affirmative assertion of the privilege is not limited to prearrest silence. (See *Salinas v. Texas, supra*, 133 S.Ct. at p. 2181 [pointing to *Roberts v. United States* (1980) 445 U.S. 552, a postarrest case, as exemplifying the affirmative assertion requirement]; see also *id.*

at p. 2182 [noting that the reasoning of *Berghuis v. Thompkins* (2010) 560 U.S. 370, a post-*Miranda* silence case requiring an express invocation, “applies with equal force: A suspect who stands mute has not done enough to put police on notice that he is relying on his Fifth Amendment privilege”].) Our supplemental brief has fully addressed the proper interpretation of *Salinas*.

The remainder of appellant’s supplemental brief is devoted to relitigating issues not implicated by the *Salinas* decision and which were already addressed in the parties’ original briefing on the merits in this case. Rather than respond to matters outside the scope of the court’s question, we stand by our original briefing with respect to these claims.

Sincerely,



JEFFREY M. LAURENCE
Supervising Deputy Attorney General
State Bar No. 183595

For KAMALA D. HARRIS
Attorney General

JML:jw

cc: Marc J. Zilversmit, Esq.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *People v. Richard Tom*

No.: **S202107**

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 November 1, 2013, I served the attached **LETTER BRIEF** 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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(2 copies)

First Appellate District, Division Three
Court of Appeal of the State of California
350 McAllister Street
San Francisco, CA 94102
(via hand-delivery)

The Honorable Stephen Wagstaffe
District Attorney
San Mateo County District Attorney's Office
400 County Center, Third Floor
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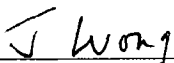
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 1, 2013, at San Francisco, California.

J. Wong
Declarant


Signature