State of California DEPARTMENT OF JUSTICE



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April 17, 2012

Frederick K. Ohlrich, Clerk Supreme Court of the State of California 350 McAllister Street San Francisco, CA 94102-4797 RECEIVED
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CLERK SUPREME COURT

RE: In re Kruzan

Supreme Court of the State of California, Case No. S185556 Court of Appeal, Fourth Appellate District, Case No. E050553

Dear Mr. Ohlrich:

In informal responses filed at the Court's request, this office previously argued that Petitioner Sara Kruzan failed to demonstrate she was entitled to an intimate partner battering defense and had not presented evidence at trial that would support its application. However, upon further review, this office respectfully requests that the Court accept this further briefing and issue an Order To Show Cause returnable in the Riverside County Superior Court to develop the facts necessary to decide whether Ms. Kruzan is entitled to an intimate partner battering defense. Opposing counsel has been advised that the Attorney General will be filing this letter.

Ms. Kruzan's habeas corpus petition challenges her 1995 conviction in Riverside County Superior Court for first degree murder with special circumstances (lying in wait and during a robbery). She was sentenced to life without parole, plus four consecutive years for use of a firearm. After serving more than 16 years of her sentence, the Governor, in December 2010, commuted her sentence to 25 years to life with the possibility of parole. Relying on Penal Code section 1473.5, she contends that had evidence of intimate partner battering and its effects, as defined by Evidence Code section 1107, been introduced at trial, there is a reasonable probability that the result of the proceedings would have been different. Specifically, Ms. Kruzan alleges that beginning when she was 11, she was groomed by the victim, a man 20 years her senior. She was raped by him when she was 13, and then forced to work for him as a prostitute, which continued until she was 16. Ms. Kruzan was 16 at the time of the crime.

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This Court requested supplemental briefing on whether, given the facts of the case, Ms. Kruzan was a victim of "domestic violence" as defined by various provisions of the Penal, Evidence, and Family Codes. Family Code section 6211 defines domestic violence as abuse which occurs in one of six specified relationships, only two of which are arguably applicable to the facts of this case. The first is a cohabitant or former cohabitant, which is defined by Family Code section 6209 as "a person who regularly resides in the household" or "formerly regularly resided in the household" of the person committing the abuse. There is no evidence in the trial record that Ms. Kruzan and the victim cohabitated. The other potentially applicable relationship is a present or past "dating or engagement relationship." A dating relationship is described by Family Code section 6210 as "frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations." We do not suggest that the definition of dating necessarily applies here. Indeed, Ms. Kruzan's tragic circumstances and the fact that she was a sexually exploited minor is the antithesis of what is traditionally thought of as "dating." But we recognize that it may be applicable here or in other cases. We also recognize that it is perverse to suggest that a minor who has been sexually abused and exploited from the age of 11 should be entitled to lesser defenses than an adult who has been in an abusive dating relationship. While Ms. Kruzan's situation may not fit neatly into the statutory definition of domestic violence, her involvement in a relationship marred by commercial sexual exploitation should not necessarily foreclose the application of the intimate partner battering defense.

Thus, we respectfully withdraw our earlier responses to the petition for writ of habeas corpus because we believe that further factual development and legal briefing is appropriate. We respectfully ask the Court to issue an Order to Show Cause returnable in the Riverside County Superior Court, with our apologies for the inconvenience that this belated request has caused.

Sincerely,

JAMES H. FLAHERTY III Deputy Attorney General State Bar No. 202818

For Kamala D. Harris Attorney General

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: In re Kruzan

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 <u>April 17, 2012</u>, 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 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Superior Court of California c/o Clerk of the Court 4050 Main Street Riverside, CA 92501-3703

Ronald A. McIntire, Esq. 1888 Century Park East, Suite 1700 Los Angeles, CA 90057-1721 (Atty. for Petitioner Kruzan) [2 Copies] Hon. Paul E. Zellerbach Riverside County District Attorney 3960 Orange Street Riverside, CA 92501

No.: S185556

Court of Appeal of the State of California Division Two c/o Clerk of the Court 3389 Twelfth Street Riverside, CA 92501

and furthermore declare, I electronically served a copy of the above document from the Office of the Attorney General's electronic notification address ADIEService@doj.ca.gov on April 17, 2012, to Appellate Defender's, Inc's electronic notification address, eservice-criminal@adi-sandiego.com.

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 April 17, 2012, at San Diego, California.

M. Argarin
Declarant

Sionature

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