



## HABEAS CORPUS RESOURCE CENTER

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May 6, 2008

Frederick K. Ohrlich  
Clerk of Court  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

### **Re: Application and Letter Brief Of Amicus Curiae In Support Of Defendant/Petitioner; *People v. Lenix*, Supreme Court No. S148029**

Dear Mr. Ohrlich:

Pursuant to California Rules of Court, rule 8.520(f), the Habeas Corpus Resource Center ("HCRC") respectfully requests leave of this Court to file this Letter Brief of Amicus Curiae in Support of Defendant/Petitioner Arthur Lourdes Lenix.

This Court granted review in the above-referenced case to determine whether an appellate court must perform a comparative juror analysis for the first time on appeal to evaluate the genuineness of the prosecutor's reasons for peremptorily challenging prospective jurors. The HCRC has been appointed to represent death row inmates in seventy-eight state and federal habeas proceedings. This Court's decision in *Lenix* will affect the litigation of *Batson* claims in both state and federal habeas corpus proceedings. By virtue of its responsibility to represent condemned prisoners and assist private counsel in such representation, the HCRC has an interest in the important question presented by this case.

On April 28, 2008, the California State Conference of the National Association for the Advancement of Colored People, et al., filed an amicus brief in support of Mr. Lenix. The HCRC submits this Letter Brief to join Argument II of the brief of amicus curiae.

As amicus curiae demonstrates in its brief, a new rule requiring trial counsel to present a comparative juror analysis in order to preserve a defendant's right to raise the evidence on appeal may not be applied retroactively. The retroactive application of a new procedural bar is fundamentally unfair, deprives a defendant of the notice and opportunity to be heard required by

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due process protections, and denies a defendant the right to meaningful post-conviction review of the merits of her or his claims. Moreover, retroactive application of a new default rule will result in amplification of the number and complexity of *Batson* claims in state and federal habeas corpus proceedings, as defendants will seek complete merits review of their claims by state and federal courts and challenge the adequacy and independence of the new procedural bar. *See Ford v. Georgia*, 498 U.S. 411, 424 (1991); *Coleman v. Thompson*, 501 U.S. 722, 729 (1991); *Wells v. Maass*, 28 F.3d 1005, 1010 (9th Cir.1994) (“In order to constitute adequate and independent grounds sufficient to support a finding of procedural default, a state rule must be clear, consistently applied, and well-established at the time of petitioner’s purported default.”).

The HCRC respectfully requests that the Court file and consider this Letter Brief in adjudicating the merits of Mr. Lenix’s appeal.

Respectfully Submitted,

MICHAEL LAURENCE, State Bar #121854  
Executive Director  
HABEAS CORPUS RESOURCE CENTER